30th Congress, 2d Session. [SENATE.] Ex. Doc., No. 28.

REPORT

OF THE

THE SECRETARY OF WAR,

COMMUNICATING

A report of the Commissioner of Indian Affairs, in relation to claims against the Cherokees, under the treaty of August 6, 1846.

FEBRUARY 12, 1849.

Referred to the Committee on Indian Affairs, and ordered to be printed.

WAR DEPARTMENT,
Washington, February 9, 1849.

SIR: I have the honor to submit herewith a report of the Commissioner of Indian Affairs, prepared in compliance with a resolution of the Senate of the 18th ultimo, requiring information in reference to claims made against the Cherokees who were parties to the treaty of August 6, 1846, especially against that portion of the nation called "old settlers" or "western Cherokees." It will be perceived that the manuscripts herewith are originals, which the commissioner requests may be returned to the files of his office, when no longer required for the use of the Senate.

Very respectfully, your obedient servant,

W. L. MARCY,
Secretary of War.

Hon. GEO. M. DALLAS,
President of the Senate.

WAR DEPARTMENT,
Office Indian Affairs, February 8, 1849.

SIR: I have the honor to report upon the resolution of the Senate of the United States, of January 18, 1849, which is in the following language, to wit:

"*Resolved*, That the Secretary of War be requested to communicate to the Senate any information that may be within the knowledge of the department in reference to claims made against the

Cherokees, who were parties to the treaty of August 6, 1846, (especially against that portion of the nation called 'old settlers' or 'western Cherokees,') for services or any other aid and assistance rendered the said Cherokees in the prosecution of their claim, which resulted in the treaty aforesaid. If such claims are based upon written contracts, he is requested to state whether these contracts were made by the duly authorized representatives of the *Cherokees* in their *national* or *aggregate* capacity, for the benefit of those who are made recipients by the treaty in all moneys arising out of the settlement of their claim, and also whether, within the knowledge of the department, such contracts have been fully and faithfully complied with, as far as practicable, by the other parties named in them; and that he will communicate the evidence upon which he bases his opinion, with any papers in possession of the department, showing the extent of the services rendered and the character of the claims thus made against the moneys which may be awarded the Cherokees under the treaty of August 6, 1846."

With reference to the first general question, I have to state that the only claims made against Cherokees who were parties to the treaty of August 6, 1846, which have been filed in this office, are those of S. C. Stambaugh and Amos and John E. Kendall, esqrs., for services rendered that portion of the nation called "old settlers" or "western Cherokees." Those claims are based upon written contracts, made by the duly authorized representatives of the said "old settlers" or "western Cherokees," for the benefit of those who are made recipients by the treaty of moneys arising out of the settlement of their claim. Copies of those contracts are herewith, marked A and B. Copies of the proceedings of conventions of the "old settlers" or "western Cherokees," from April, 1842, to July, 1846, and a copy of a certificate of contract with S. C. Stambaugh, esq., by the delegation of said party who signed the treaty of August 6, 1846, are also herewith, marked C.

The files of the department show that the party of Cherokees, styled the "government party," were represented before the commissioners, who, on the part of the United States, negotiated the treaty of 1846, by Hon. Waddy Thompson; and that the "treaty party" were represented before the same commission by George W. Paschal and Matthew St. Clair Clarke, eqrs. No claim for services, however, appears to have been presented here, by either of these attorneys, against the parties represented by them respectively; but the records show that a draft, drawn by the treasurer of the Cherokee nation on this department in favor of Mr. Thompson for $5,000, and made chargeable to the general funds of the nation, have been paid, in addition to another sum of $5,000, which, it is understood, he received directly from the authorities of the tribe. Whether that amount was on account of services rendered by him for the "government party," or for some other object, was not stated in the treasurer's order, nor do the records or files state the object. There is nothing on file or of record showing the amount which the "treaty party" paid their attorneys, but it has

been verbally represented that, from the funds stipulated to be paid to the "treaty party," $7,500 have been paid to Mr. Paschal and $2,500 to Mr. Clarke.

The only counsel or agents known to the department as being engaged in prosecuting the claims of the "old settlers," or "western Cherokees," were S. C. Stambaugh, and the Messrs. Kendall, the former has been acting on behalf of that party since April, 1842, the latter since 12th July, 1843.

The proceedings of the first convention, which appears to have been held by the "old settlers" for the purpose of petitioning the United States to restore to them the country entered upon by the emigrants under the treaty of 1835–'6, or to obtain indemnity for losses and damages sustained by their dispossession, will be found in paper C, pages 1 to 7 inclusive. This convention convened on the 9th and adjourned on the 16th of April, 1842. The third resolution adopted by the convention is in the following words:

"*Resolved*, That a delegation be appointed to proceed to the city of Washington as soon as practicable, to confer with the President of the United States, and petition Congress, if necessary, on the affairs of the western Cherokee nation, and that this delegation be and they are hereby vested with full power and authority to act for and in behalf of the said nation, to effect an arrangement and final adjustment of their affairs with the United States government; that they have also full power to employ and pay counsel to aid and assist them in accomplishing the purposes of their appointment; and in all things these, the delegates representing the western Cherokees, are empowered to act definitively and conclusively for the nation, the same as if all their people were personally present.

Whereupon, the following delegates were unanimously chosen in pursuance of the above resolution, viz: John Rogers, James Carey, senior, (or Chicken-cock,) and Thomas Wilson, and that Peter Harper be appointed clerk to the delegation."

The fifth resolution is in the following words:

"*Resolved*, That this convention having full and entire confidence in the integrity and ability of Colonel S. C. Stambaugh, now at Fort Gibson, who has had a long and intimate acquaintance with the concerns of our people, they hereby nominate him as counsel to be selected by the delegates in pursuance of the foregoing resolution, and that he be requested to accompany the delegation to Washington."

The same paper (C) contains the proceedings of the conventions held every succeeding year, until the treaty of August, 1846, providing for the settlement of their claims, was concluded; and each convention confirmed the acts and proceedings of those which preceded it. The proceedings, as detailed, are authenticated by the delegation who signed the late treaty, as will be seen by the certificates appended, which confirmed the appointment of S. C. Stambaugh as counsel and agent in April, 1842, and continued by subsequent delegations, as well as that of the Messrs. Kendall. In the

certificate of the delegation, (see pages 7 and 8,) made four days after the treaty was signed by them, "they hereby declare, under the authority vested in them, that all contracts or liabilities incurred by them or any of their predecessors, for the benefit of the western Cherokees, in their aggregate capacity, shall be paid out of any moneys which have been or may hereafter be found due to the said western Cherokees, or "old settlers;" and the Secretary of War is hereby authorized to cause the same to be paid."

The contracts herein before referred to are the only papers on file in this office purporting to exhibit a claim against the "old settlers," or "western Cherokees," in their collective capacity. They are contingent in their character, as the "old settlers," as such, have no *national* or *annuity* fund out of which to pay for services or other aid which it might be necessary to procure in the prosecution of their claim.

The files of the department attest the assiduity and ability with which Messrs. Stambaugh and Kendall attended to the duty entrusted to them, and I think it highly probable that the "western Cherokees," or "old settlers," are greatly indebted for the stipulations made for their benefit, in the treaty of 1846, to the researches and persevering efforts of their counsel. The evidence upon which I have based my opinion is my own knowledge of the personal exertions of the counsel named, and that shown in the accompanying papers, to wit: Memorial of the western Cherokees, prepared by S. C. Stambaugh, esquire, marked D; Senate document, 29th Congress, 1st session, No. 298, pages 19 to 73 inclusive, being arguments of Messrs. Stambaugh and Kendall in behalf of the western Cherokees; arguments and other papers submitted by the said counsel to the commissioners who negotiated the treaty of 1846, marked E, F, G, H, I, J, K, L, and M; letters of 4th May, 1848, of S. C. Stambaugh, esquire; letter of Messrs. Stambaugh and Kendall, of 8th June, 1848, to the President of the United States; and the memorial of western Cherokees, or "old settlers," to the President, of 4th August, 1848.

The accompanying papers—with the exception of the Senate document—belonging to the files of this office, it is respectfully requested that they be returned here, after they shall have been acted upon by the Senate.

Very respectfully, your obedient servant,

W. MEDILL.

A.

Be it known, by these presents, to the Secretary of War, Commissioner of Indian Affairs, and all accounting officers of the United States government, that we, the undersigned delegates, appointed to represent the "old settlers," known as the Cherokee nation west of the Mississippi river, under the treaties of eighteen hundred and twenty-eight and eighteen hundred and thirty-three, hereby ratify

and approve the appointment sanctioned by Captain John Rogers, John Smith, James Carey and Thomas Wilson, on the sixteenth day of April, one thousand eight hundred and forty-two, of Colonel Samuel C. Stambaugh, as counsel and agent, to prosecute the claims of the western Cherokees, and also concur in the amendments afterwards made to the contract entered into under said appointment by Captain Rogers, Ely F. Phillips and John L. McCoy, on the fifteenth day of July, one thousand eight hundred and forty-three. They, therefore, by virtue of the power in them vested, do hereby continue the appointment of said Stambaugh, as counsel and agent for the western Cherokees, or old settlers, and authorize and empower him to appear before the honorable Edmund Burke, honorable Albion K. Parris and Major William Armstrong, commissioners appointed by the President of the United States, and organized this 8th day of July, 1846, and before any other tribunal and department of the government of the United States hereafter, on behalf of the said old settlers or western Cherokees, until all their claims against, or accounts with the United States, are finally settled.

And for the services already rendered and hereafter to be rendered, the undersigned, as the sole representatives of the said "old settlers," pledge the faith of their people to pay, or cause to be paid, to said Samuel C. Stambaugh, the sum of ten thousand dollars, so soon as an arrangement is made with the United States which is acceptable to this delegation; and upon all monies which may hereafter be obtained for the western Cherokees from the United States, in consequence of the prosecution of their claims since the sixteenth of April, eighteen hundred and forty-two, aforesaid, and upon all monies which may hereafter be obtained upon the claims now before the government of the United States, above the amount of two hundred thousand dollars, the said Stambaugh is to receive, in addition to the ten thousand dollars, five per cent., (5 per cent.,) as soon as said amount is ascertained or allowed by the United States as due to the said old settlers. And it is hereby further agreed, that on account of the long and faithful services rendered by said Samuel C. Stambaugh, and in accordance with the intention of the convention who selected him in April, 1842, it is hereby recommended that he shall receive, in addition to his regular fees herein provided for, the sum of twenty-five hundred dollars, for his expenses in the Cherokee nation and in the city of Washington, attending to the business of their people. Provided, however, that if no treaty or settlement is made which may be accepted by the undersigned delegation, then the said Stambaugh can have no claim whatever against the western Cherokees or old settlers on account of his services or expenses.

And the Secretary of War, Commissioner of Indian Affairs, and accounting officer of the United States treasury, are hereby authorrized and empowered, and enjoined to fulfil this contract out of any monies that may hereafter be found due the old settlers aforesaid.

In testimony whereof, we have hereunto placed our hands and

seals, this 8th day of July, 1846, at the city of Washington, District of Columbia.

JOHN BROWN,
his
WM. × DUTCH,
mark.
his
RICHARD × DREW,
mark.
E. F. PHILLIPS,
JOHN L. McCOY.
Delegation of old settlers.

Acknowledged before us, the words "it is hereby recommended that," inserted before signing.

JOHN ROGERS,
HENRY HOLT.

B.

Whereas, the Cherokee Indians who emigrated to the country west of the Mississippi were under the protection and guarantees of treaties between the United States and the Cherokee nation west of the Mississippi, in 1828 and 1833, have claims upon the United States for wrongs done them in the violation of said guarantees, under color of a treaty with the Cherokees east, concluded in December, 1835; and whereas, said wrongs have not only deprived them of the lands which were granted and guaranteed to them forever, but have put an end to their existence as a separate people, and exposed them to annoyance, oppression, and personal danger; in utter defeat of the main object in view when they consented to abandon the home of their fathers; and whereas, they are desirous of making their rights and condition clearly known to the government and people of the United States, in the confidence of receiving at their hands remuneration for the property of which they have been despoiled, and obtaining new guarantees to protect them in their property and persons; and whereas, the very wrongs of which they complain have embarrassed every movement, through recognized authorities, to obtain redress, and deprived them of the means necessary to command it; and whereas, at a council held by a number of the chiefs, head men and counsellors of the western Cherokees, or old settlers under the treaty of 1817, convened at the house of Mrs. Nancy Rogers, in the forks of the Verdigris and Grand rivers, on the 9th day of April, 1842, the following proceedings, among others, were had, viz:

"*Resolved*, That a delegation be appointed to proceed to the city of Washington as soon as practicable, to confer with the President of the United States on the affairs of the western Cherokee nation; and that this delegation be and they are hereby vested with

full power and authority to act for and in behalf of the said nation, to effect an arrangement and final adjustment of their affairs with the United States government; that they have, also, full power to employ and pay counsel to aid and assist them in accomplishing the purposes of their appointment; and in all things these, the delegates representing the western Cherokees, are empowered to act definitely and conclusively for the nation, the same as if all their people were personally present.

"Whereupon the following delegates were unanimously chosen in pursuance of the above resolution, viz: John Rogers, James Carey, senior, (or Chicken Cock,) and Thomas Wilson; and that Peter Harper be appointed clerk to the delegation."

And whereas, at another council or convention of chiefs, head men and counsellors of said Cherokees west, held at the house of Mr. Alexander Foreman, mouth of Illinois river, Illinois district, on the 7th day of November, 1842, the following resolutions were adopted, viz:

"*Resolved*, That we agree with and adopt the resolutions and acts entered into by Captain John Rogers and others, on the 16th day of April, 1842.

"*Further resolved*, That John L. McCoy and Ellis F. Phillips be and are appointed as a delegation, to be attached to the number already appointed, to proceed to the city of Washington to faithfully execute and carry out all claims unadjusted on the part of the western Cherokees with the government of the United States."

And whereas, Messrs. Amos and John E. Kendall, acting as agents for claims in the city of Washington, having confidence in the justice of said claims, and in the disposition of the government and people of the United States to make reparation to this much injured people, are willing to undertake the management of their case for a compensation altogether contingent;

Now, therefore, this article of agreement, entered into this 12th day of July, 1843, between Captain John Rogers, John L. McCoy and Ellis F. Phillips, a majority of said delegates, for and on behalf of the said Cherokee nation west, of the one part, and Amos Kendall and John E. Kendall, of the District of Columbia, of the other part, witnesseth: that the said Amos Kendall and John E. Kendall do stipulate and agree, either separately or in conjunction with such other person or persons as have been or may be employed by said Cherokees west, to act as counsel in the prosecution of such claims to final adjustment before the executive departments and the Congress of the United States, viz: to prepare and submit to the Secretary of War a full statement in writing of the nature and extent of said claims, and use all proper means to obtain from him a favorable report thereupon at the next session of Congress; to prepare for publication a full statement of the wrongs and claims of the Cherokees west, and, when printed, put it into the hands of the members of the next Congress, and such other persons as they, the said A. and J. E. Kendall, may think proper; to prepare any memorial or memorials to Congress setting forth said

claims; to digest and draw up any statement or statements of facts or argument necessary for the information of that body, or either House, or any committee or committees thereof, or any commission to which the same may be referred; and in all respects to use due diligence and all proper means to obtain the favorable action of said committees and of Congress itself, and of any commission not leaving Washington, and the same to renew and pursue until said claims shall be adjusted, or so long as there shall be any reasonable ground to hope for such adjustment. In consideration whereof, the undersigned, John Rogers, John L. McCoy and Ellis F. Phillips, delegates duly authorized as aforesaid, do hereby, on behalf of said Cherokees west, covenant and agree to pay or cause to be paid the full commission of five per cent. to the said A. and J. E. Kendall, upon any sum or sums of money, or whatever else of value may be allowed and appropriated in full or in part satisfaction of said claims, to be paid from time to time as appropriated or allowed; and the said delegates do hereby authorize and empower the said A. and J. E. Kendall, as agents and attornies in fact for the said Cherokees west, to demand and receive from the treasury of the United States, or from the proper office or officer thereof, one-twentieth part of all sums of money which may be allowed and appropriated, or one-twentieth part of any stock, scrip, or any other species of funds, securities or annuities which may be allowed, to be made out and issued in their own names; and if lands or other property, or any interest therein, shall be granted in discharge of said claims or any part thereof, to demand and receive from the proper office or officer a full title to one-twentieth part thereof—it being the true intent and meaning of said delegates that the said A. and J. E. Kendall shall receive five per cent., or one twentieth part, of any and every thing of value which may be granted or appropriated on account of said claims, to be received directly from the United States without any further act or authority by or from the said Cherokees west.

And the said delegates do further authorize and empower the said A. & J. E. Kendall, as agents and attornies, in fact, of the said Cherokees west, to sign the names of the said delegates to any letters and memorials to the President, Secretary of War, Senate, House of Representatives, or other officer or individual, necessary to the prosecution and allowance of said claims; and to execute any receipt, receipts, acquittances, or other instruments of writing, which may be necessary to procure the payment or delivery to them, according to the true intent and meaning of this instrument, of one-twentieth part of the money, property, or evidence of right, title, or claim to money or property which may be appropriated or allowed in satisfaction of said claims, in full or in part; and it is further covenanted and agreed by said delegates, on behalf of the said Cherokees west, that they, the said Cherokees, shall execute any additional power or authority, if any be deemed necessary by the government of the United States, to enable the said A. & J. E. Kendall to receive and enjoy the commission

aforesaid, according to the true intent and meaning of this instrument.

Witness our hands and seals, at Washington, D. C., the day and date above written.

JOHN ROGERS.
E. F. PHILLIPS.
JOHN LOWRY McCOY.

AMOS KENDALL.
JOHN E. KENDALL.

Signed, sealed, and delivered, in the presence of
J. E. DOW, *J. P.*

—

DISTRICT OF COLUMBIA, *county of Washington, ss.*

On this twentieth day of July, A. D. 1843, before the subscriber, a justice of the peace in and for the said county, personally appeared John Rogers, E. F. Phillips, John L. McCoy, Amos Kendall, and John E. Kendall, subscribers and parties to the above instrument of writing, and declared the same to be their free acts and deeds, the interlineations on the third page having been made before signing.

J. E. DOW, [SEAL.]
Justice of the Peace.

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AUGUST 14, 1846.

The undersigned delegates of the western Cherokees or old settlers, being a party to the treaty recently concluded to put an end to Cherokee difficulties, do hereby authorize and request the Secretary of War to pay the commissions, stipulated for in the within contract, out of any moneys which may be appropriated to pay the debts of the old settlers, or out of any moneys which may be found due to them under the said treaty, it being our intention that this contract shall be executed in good faith.

JOHN BROWN.
E. F. PHILLIPS.
his
WM. + DUTCH.
mark.
his
RICHARD + DREW.
mark.
JOHN L. McCOY.

Witness:
NELSON ROGERS.

C.

Proceedings of a convention of old settlers or Western Cherokees, adopted April 16, 1842.

At a convention of chiefs, headmen, and counsellors of the western Cherokees, or old settlers, under the treaties of 1817 and 1828, convened agreeably to notice given, at the house of Mrs. Nancy Rogers, in the forks of Verdigris and Grand rivers, on the 9th day of April, 1842, Captain John Rogers was appointed president, and Thomas Wilson secretary; and, after counselling together from day to day, until Saturday the 16th instant, the following preamble and resolutions were unanimously adopted:

Whereas, information has been received, that a delegation has proceeded to the city of Washington, headed by John Ross, for the purpose, it is believed, of making some arrangement with the government of the United States, involving the rights and interests of the whole Cherokee nation. And whereas, the western Cherokees, who claim to be the rightful owners of the country now occupied by the nation, have no voice in that delegation, and have not been consulted by the United States or the eastern Cherokees. This convention, therefore, have unanimously determined in behalf of the nation, whose rights have been so long encroached upon, to make known their causes of complaint to the President and other constituted authorities of the United States, and appeal for a redress of their grievances. And for the purpose of preventing the consummation of this injustice, they adopt the following resolutions, viz:

Resolved, That John Rogers, the Glass; James Carey, senior, (or Chicken Cock,) John Smith, Captain Dutch, Thomas L. Rogers, be appointed a committee to prepare a memorial to the President of the United States, on the subject for which this convention has been assembled.

Resolved, That the committee thus appointed, be instructed to wait upon Governor Butler, Cherokee agent, and submit these proceedings, with the memorial to be drawn up and signed, for his perusal and sanction, and that he be respectfully requested to forward the same to the Secretary of War, to be laid before the President of the United States, with such remarks in favor of the objects contemplated as he believes they deserve.

Resolved, That a delegation be appointed to proceed to the city of Washington, as soon as practicable, to confer with the President of the United States and petition Congress, if necessary, on the affairs of the western Cherokee nation; and that this delegation be, and they are hereby, vested with full power and authority to act for and in behalf of the said nation, to effect an arrangement and final adjustment of their affairs with the United States government; that they have, also, full power to employ and pay counsel to aid and assist them in accomplishing the purposes of their appointment, and in all things, these the delegates, representing the western

Cherokees, are empowered to act definitely and conclusively for the nation, the same as if all their people were personally present.

Whereupon, the following delegates were unanimously chosen, in pursuance of the above resolution, viz: John Rogers, James Carey, senior, (or Chicken Cock,) and Thomas Wilson; and that Peter Harper be appointed clerk to the delegation.

Resolved, That the delegates, hereby appointed, shall have power to fill any vacancy that may occur in their number.

Resolved, That this convention, having full and entire confidence in the integrity and ability of Colonel S. C. Stambaugh, now at Fort Gibson, who has had a long and intimate acquaintance with the concerns of our people, they hereby nominate him as counsel to be selected by the delegates, in pursuance of the foregoing resolution, and that he be requested to accompany the delegation to Washington.

Resolved, That this convention deeply and sincerely regret the protracted indisposition of their chief and friend, *Andrew Vann*, who has long been confined to a sick bed, and the delegates this day appointed are requested to submit all the proceedings for his inspection and approbation, if it can be done before they leave for Washington.

Resolved, That our delegates are requested, immediately upon their arrival in Washington, to call upon the honorable A. H. Sevier, and honorable Mr. Fulton, senators, and honorable Edward Cross, member of the House of Representatives, from the State of Arkansas, and furnish them with a copy of our proceedings, and also make known to them, without reserve, all the grievances of the western Cherokees.

The convention then adjourned till afternoon.

At 3 o'clock, p. m., convention again met, and after having the subject of procuring funds, to defray the expenses of the delegation, during the period of their employment on the duty, this day assigned them, the following resolution was offered and unanimously adopted.

Resolved, That John Rogers, James Carey, sr., and Thomas Wilson, delegates, appointed on behalf of the western Cherokees, to represent them at the city of Washington, are instructed to call on Governor Butler, agent for the Cherokees, and request an advance of one thousand dollars, for the purpose of aiding in defraying the expenses of said delegation; which sum we hereby bind our nation to refund to the United States, out of the first funds which may be due on account of our annuities, if provision is not sooner made by other means for defraying the said expenses. And in case the United States agent for our nation does not advance said sum, then the delegates aforesaid, if they find it necessary to obtain funds, are hereby authorized and empowered to borrow that amount, on such terms as they can procure it, and pledge the faith and property of the western Cherokees for its payment. And said delegates are also authorized to make such provision, in the contemplated arrangement with the United States, as they may deem

proper, to embrace all expenditures incurred and payments necessary to make, under the powers entrusted to them by this convention.

Resolved, That these proceedings be signed by the president, secretary, and committee, for and in behalf of the western Cherokee nation.

JOHN ROGERS, *President.*

THOS. WILSON, *Secretary.*

The undersigned, representatives of the old settlers or western Cherokees, who signed the treaty of the 6th day of August, 1846, hereby certify that the above and foregoing is a correct copy of the proceedings of the convention of the said old settlers or western Cherokees, concluded on the 16th day of April, 1842, and they hereby declare, under the authority vested in them, that all contracts or liabilities incurred by them or any of their predecessors, for the benefit of the western Cherokees, in their aggregate capacity, shall be paid out of any moneys which have been or may hereafter be found due to the said western Cherokees or old settlers; and the secretary of war is hereby authorized to cause the same to be paid.

Witness our hands, this 12th day of August, 1846.

JNO. BROWN,
his
WM. + DUTCH,
mark.
RICHD. DREW,
JOHN L. McCOY,
E. F. PHILLIPS,
Delegation of old settlers.

Western Cherokee convention.

At a convention of a number of the Cherokees, head men, and warriors, of the western Cherokees or old settlers, convened at the house of Mr. Alexander Foreman, mouth of Illinois river, Illinois district, Cherokee nation, on the 7th day of November, 1842, Loup Watts was appointed president, and John L. McCoy secretary, and, after counselling together, the following resolutions were unanimously adopted:

Resolved, That we agree with and adopt the resolutions and acts entered into by Captain John Rogers, and others, on the 16th day of April, 1842.

Resolved, further, That John L. McCoy and Ellis F. Phillips be, and are, appointed as a delegation to be attached to the number already appointed, to proceed to the city of Washington, to faithfully execute and carry out all claims unadjusted on the part of the western Cherokees with the government of the United States.

Resolved, further, That these proceedings be signed by the president and secretary for, and in behalf of, the chiefs, head men, and counsellors of the western Cherokees, comprising the convention.

his
LOUP × WATTS, *President.*
mark.

JOHN L. McCOY, *Secretary.*

The undersigned certify that the foregoing is a true copy of the original in our possession.

JOHN BROWN,
his
WM. + DUTCH,
mark.
his
RICHARD + DREW,
mark.
JOHN L. McCOY,
E. F. PHILLIPS,
Delegation of old settlers.

Extract from proceedings of general council of "western Cherokees," assembled at Tallentusty, Cherokee nation, on the 4th day of December, 1844.

Resolved, by the "western Cherokees," in general council assembled at Tallentusty, in the Cherokee nation, on the 4th day of December, 1844, That we approve, ratify, and confirm the resolution and acts of the meeting of "western Cherokees," held in the forks of the Verdigris and Grand rivers, on the 16th day of April, 1842, and of the acts and resolutions of the meeting of the "western Cherokees" held at Alexander Foreman's house, at the mouth of the Illinois river, on the 7th day of November, 1842, and annex hereto, as a part of the proceedings of this council, said resolutions and acts.

JOHN BROWN,
President Committee.

P. HARPER, *C. C.*

11. *Resolved, by the "western Cherokees," general council assembled at Tallentusty, in the Cherokee nation, on the 4th day of December*, 1844, That a delegation be appointed to proceed to the city of Washington, as soon as practicable, to confer with the President of the United States on the affairs of the western Cherokee nation, and that the delegation be, and they hereby are, vested with full power and authority to act for and in behalf of

the said nation, to effect an arrangement and final adjustment of their affairs with the United States government; and in all things these delegates, representing the "western Cheokees," are empowered to act definitely and conclusively for the nation, the same as if all their people were personally present.

JOHN BROWN,
President Committee.

P. HARPER, *C. C.*

12. *Resolved, by the "western Cherokees," in council assembled,* That the following named "western Cherokees" or "old settlers" be appointed, and they hereby are appointed, authorized, and empowered to represent the "western Cherokees" in a delegation to the city of Washington, to confer with the President of the United States, &c., &c., &c., Captain John Rogers, John Brown, Richard Drew, William Dutch, John Smith.

JOHN BROWN,
President Committee.

P. HARPER, *C. C.*

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The undersigned, delegation of old settlers or western Cherokees, who signed a treaty with the United States, "for the settlement of Cherokee difficulties and claims against the United States," on the sixth instant, do hereby certify that the foregoing are true and corect copies of the proceedings of the convention of old settlers or western Cherokees, adopted at the house of Mrs. Nancy Rogers, on the 16th day of April, 1842; also at the mouth of Illinois on the 7th November, 1842, and also, the 1st, 10th, and 11th resolutions adopted at Tallentusty, Cherokee nation, on the 4th day of December, 1844, at which convention the last delegation was appointed to represent the western Cherokees at the seat of the United States government; which delegation, as constituted and recognised, is now present.

And the undersigned do further certify, that by virtue of the authority given by the convention held in April, 1842, the proceedings of which were approved at all subsequent meetings of their people, the several delegations appointed entered into contracts and incurred debts to enable them to prosecute their claim as set forth in the proceedings of these several conventions, for the payment of which debts the faith of the "old settlers," in their aggregate capacity, or as a nation, was solemnly pledged. Before they signed the treaty aforesaid in their representative capacity, decided that all debts contracted by either of said delegates on behalf of the nation, which are shown to be just and not contracted on private account, shall be paid out of the first moneys ascertained to be due the western Cherokees under any treaty arrangement entered into with the United States.

And the undersigned do further certify and declare, that Colonel S. C. Stambaugh was appointed counsel for the western Cherokees,

in pursuance of a resolution entered into on the 16th day of April, 1842; that he had been for some time previously engaged in the service of the western Cherokees, and on that day they entered into a contract to pay him for his services the sum of ten thousand dollars as soon as an arrangement, to be accepted by them, was entered into with the United States; and upon all moneys which might be awarded from time to time, and at the conclusion of such arrangement, for the benefit of said western Cherokees, above two hundred thousand dollars, he, said Stambaugh, was to receive, in addition, at the rate of four per cent. upon said amount, and also to pay his reasonable expenses in going with the first delegation to Washington, and there attending to their business. But if nothing was obtained from the United States for the western Cherokees, then the said Stambaugh was not to receive any thing on account of his services or expenses.

And they do further declare, that the per centage to be allowed to said Stambaugh was afterwards, in the year 1844, increased from four to *five* per cent., so as to make said per centage equal to that allowed to Amos Kendall, esq., who was appointed on the 13th day of July, 1843, to act in conjunction with said Stambaugh in the prosecution of the claims of the western Cherokees.

In testimony whereof we have hereunto set our hands and seals this 12th day of August, 1846.

JOHN BROWN.
his
WILLIAM + DUTCH.
mark.
his
RICHARD + DREW.
mark.
JOHN L. McCOY.
E. F. PHILLIPS.

WASHINGTON, *June* 8, 1848.

SIR: The undersigned, agents and attorneys for the Cherokees, heretofore known as "old settlers," respectfully present the following suggestions for your consideration:

1st. On the 6th day of August, 1846, a treaty was concluded between the United States and the Cherokee people, which provides for the settlement of all difficulties "existing between the several parties of the Cherokee nation," as well "as of the claims held by the same parties against the United States." The undersigned were employed by that portion of the nation, designated "old settlers" or "western Cherokees," to present and prosecute their claims before the government of the United States. Written contracts were entered into by the representatives of the people, with the undersigned, in the years 1842, 1843, and 1846, the last of which recognizing and confirming the others, were signed by

the delegation whose names are appended to the treaty of August 6th, 1846.

2d. This delegation being virtually the same which executed the original contracts, was officially recognised by the government of the United States, and were adjudged competent to cede and relinquish to the United States the country guarantied to the "western Cherokees," by the treaty of February 14, 1833, and dispose of all the interests of their people. *They executed this last contract with the undersigned, and bound their people for its fulfilment as effectually as they are bound by the contract entered into with the United States, relinquishing all right and title to their country.*

3d. One of the undersigned has been recognized by the proper authorities of the United States, *at all times* from the commencement of the negotiation with the "western Cherokees," in 1842, and the other from the date of his contract in 1843, until the treaty which resulted from that negotiation was concluded and signed on the 6th day of August, 1846. The public records will attest this fact. The able report of the Commissioner of Indian Affairs, (upon the claim submitted by the western Cherokees,) dated March 31st, 1846, approved by the secretary of war, April 11th, 1846, and communicated to Congress by the President of the United States, with his approval, on the 13th of the same month, embodies the communications and arguments of the undersigned, *as attorneys for the western Cherokees*, [See Doc. No. 185, 1st sess. 29th Congress.] This report, thus sanctioned, adopted the views generally entertained and presented by the undersigned on behalf of those they represented; and if that decision had not been set aside by the appointment of commissioners with instructions to settle the Cherokee difficulties upon a *different basis*, the old settlers or western Cherokees would now claim from the United States *the full value of seven millions acres of land.*

4th. In the beginning of July, 1846, (not three months after the report of the Commissioner of Indian Affairs was sent to Congress,) the commissioners, above referred to, were appointed as a special board to decide the points in issue, and on the 8th day of that month they organized as a board, opened the council with the several delegations of Cherokees, *and officially notified the undersigned that they might appear before them as counsel and attorneys for the "old settler" party.* Under this authority they did appear, and during a session of twenty-nine days were assiduously engaged in arguing the cause of their constituents, and attending to all their interests.

5th. On the day the above council convened, the delegation of "old settlers," who were recognised and received as such by the commissioners, and afterwards signed the treaty, renewed and confirmed the contracts entered into by their predecessors, with one of the undersigned, and declared it to be obligatory upon their people, and continued to recognise the other as their counsel, afterwards confirming his contract also.

6th. After a tedious and laborious investigation, the commissioners on behalf of the United States, presented a treaty, *based*

upon their decision, to which the "western Cherokees" objected. The commissioners, however, peremptorily refused to make any alterations, and a dissolution of the council was threatened, which would have rendered the condition of the Cherokees at home more deplorable than ever. They were thus compelled to accept the conditions offered, and on the 6th day of August the treaty was signed. A clause was inserted in article 5, setting apart $50,000 to enable the "old settlers" (*who were destitute of other means*,) to pay the debts contracted by them in their *national* or *collective* capacity, during the long period occupied in prosecuting their claims before the government of the United States. This amount of $50,000 was fixed by the *commissioners and not by the "old settlers" delegation.* The latter insisted that such stipulation should be inserted as would enable them to adjust and settle, *under sanction and approval of the Secretary of War, every just claim for which their people were bound in their aggregate capacity*, and that no *private* or *individual* claims should be allowed. They proposed that the Secretary of War or Commissioner of Indian Affairs should be constituted the judge or judges in all cases, and the claims to be paid only upon his or their decisions.

7th. The Senate, however, amended the treaty by striking out the $50,000 clause, together with the 12th article of the treaty, which also only affected the interests of the "old settlers;" and with these amendments the treaty was ratified by that body, late in the night of the 8th of August, 1846; two days after it was signed by the contracting parties. On the 12th of the same month, the delegation of "old settlers" who signed the treaty certified to the validity of the contract made with one of the undersigned, and on behalf of the people authorized and requested a full settlement to be made upon said contract out of any moneys that might be found due to the "old settlers" or "western Cherokees." And on the 14th day of the same month the same action was taken by the delegation upon the contract made with the other of the undersigned.

The undersigned beg the special attention of the Secretary of War to the following points in this case, viz:

The delegation of western Cherokees had as much authority to make contracts with the undersigned as with the United States.

The United States, having recognised that delegation as competent to dispose of all the rights of their people involved in the controversy, are estopped from saying that *they were not competent to make valid contracts with the undersigned.*

They are further estopped by recognising the undersigned as the agents of the "western Cherokees," with a knowledge that they were not volunteers, but acting *under contracts for a stipulated compensation.*

We then present our contracts with the western Cherokees, resting on the *same authority* as their treaty with the United States.

Let us look for a moment at the position of the United States in this matter, not for the purpose of censuring any one; but to secure justice by an appeal to truth.

By the labors of the undersigned, acting and recognised as agents employed at a stipulated compensation, the government is induced to concede that the western Cherokees are entitled to be paid for their country.

They recognise the delegation of western Cherokees as competent to contract for the liquidation of this claim, and the disposition to be made of the moneys found due to their people.

The delegation tell them, that their first wish is to pay their debts and discharge the obligations they have contracted during the prosecution of their claim.

The United States tell them, "*No, not a dollar shall be paid out of your own money; the friends who have fed you and loaned you money to enable you to prosecute this claim, and the counsel who have faithfully served you through toilsome years, for a compensation altogether contingent, shall not have a dollar of your money!*"

In spite of their own requests and remonstrances, the western Cherokees are not permitted to *pay their own debts with their own money*, and the United States present the extraordinary spectacle of interposing, not to compel a half-civilized dependant people to do justice, *but to prevent it!*

The history of the world presents many cases in which governments have interposed to compel foreign nations or tribes to pay debts due their subjects or citizens; but probably this is the first instance in which a government has forced a nation or people, foreign or *quasi* foreign, into a treaty, repudiating their just debts *to its own citizens!*

The western Cherokee delegation of 1846 refused to concur in the treaty, as amended, because it left them without means to pay their board bills or their travelling expenses back to their country. To induce them to acquiesce in the amendment, it was arranged, under the sanction of the government, that the Ross and treaty party should loan them $20,000 out of the funds provided for those parties in the treaty, which sum was immediately put at their disposition.

Thus was the delegation induced to sanction the amended treaty, when that very act deprived them of the power to refund the money which was loaned them as the consideration for its performance! Not one dollar of this loan can the old settlers refund to the Ross party or the treaty party, out of the funds accruing to them from this treaty, and they have no other.

If, under such circumstances, the United States will not permit the western Cherokees to refund the money, are they not bound by every principle of honor and honesty to refund it themselves?

And if the United States will not permit this people, willing and anxious as they are, to discharge all their just debts and obligations out of their own money, are they not equally bound to discharge them out of their own treasury?

The undersigned feel that, if the United States, having recognized them in every shape as the attorneys of the western Cherokees, and knowing the important services rendered by them, will not suffer that people to comply with their acknowledged con-

tracts and pay their own honest debts out of their own money, they virtually assume the obligation upon themselves, and are bound to pay every just debt due from the western Cherokees in their aggregate capacity. It is a case infinitely stronger than that of the French claims prior to 1800, for the payment of which an act passed both Houses of Congress at the last session.

But how shall the object be accomplished?

The objects of the treaty of 1846 are not yet consummated. The second article provides that "all party distinctions shall cease, *except so far as they may be necessary to carry out this convention or treaty.*" The western Cherokees or old settlers are thus recognized as a distinct and separate party, until the objects of the treaty shall be consummated. As such, they have sent a delegation here with full power to do any act necessary to carry out that treaty. We go further, and affirm that the western Cherokees remain, *in all respects*, as much a distinct party as they were before. It was for a *consideration* that they agreed to the treaty, and that consideration has not been paid. Should the United States fail or refuse to pay it, will any one say that the treaty would be binding upon them in any of its provisions? Until the payment, therefore, the whole subject remains open and subject to any modification which may be agreeable to the parties. A modification, affecting only *one* of the Cherokee parties, may be made between the United States and *that* party, without consulting the *other* Cherokee parties. Each of the parties may give such direction to the funds set apart for its own exclusive use as it may think proper, without consulting the other parties. This is a plain principle of law as well as of common sense.

The undersigned, therefore, propose that the United States shall, prior to the consummation of the treaty by payment of the money, enter into such further arrangements with the western Cherokee delegation as will enable them to discharge, out of their own funds, all the just debts due from them in their aggregate capacity, upon the adjudication of the Secretary of War and Commissioner of Indian Affairs, a court of justice, or such other tribunal as may be deemed more prompt or convenient.

The undersigned are willing that their claims shall be adjudicated upon by the strictest rules of law and equity, and ask no more than they could recover in a court of justice, if the old settlers could be made parties to a suit.

In conclusion, the undersigned beg leave to state that their contracts have all the validity which the signatures of the western Cherokee delegation could give to the treaty of 1846 with the United States, and *more*. The contracts *prevented* the treaty; they were made virtually by the same delegation acting by the same authority; and that delegation had no moral right or legal power to enter into any subsequent arrangements with the United States *incompatible with the obligations of those contracts*. And the undersigned do not doubt that, if the question could be made a subject of judicial decision, the courts of the United States would either declare inoperative and void so much of the treaty as is in-

consistent with the obligations of these prior contracts, or require the United States to discharge the debts themselves.

With high consideration, this paper is respectfully submitted by your obedient servants,

S. C. STAMBAUGH,
AMOS KENDALL,
Attorneys for "old settler" Cherokees.

Hon. WM. L. MARCY,
Secretary of War.

A copy of one of the contracts referred to in the foregoing communication has already been filed; the other is now enclosed.

WASHINGTON CITY, *August* 4, 1848.

HONORED SIR: The undersigned, representatives of that portion of the Cherokee nation known as "western Cherokees" or "old settlers," duly appointed by a general meeting of their people, convened in Skin Bayou district, Cherokee nation, on the 24th day of December, 1847, very respectfully ask your excellency to procure a faithful execution of the treaty of August 6, 1846, between the United States and Cherokees, without further delay.

It is known to your excellency, that in the year 1817 a treaty was concluded between the United States and the Cherokee nation of Indians, by which it was stipulated that the tribe should be divided, and become separate and distinct nations—the one portion to exchange their lands east of the Mississippi for an *equal* quantity west of that river. The number of the emigrating party was to be ascertained during the month of June, 1818, as also the number of that portion who determined to remain on the lands they then occupied, for the purpose of thus enabling them to make a fair division of the property they *held in common*. In the year 1819 (the census to be taken for the above purpose being dispensed with) a treaty was entered into between the United States and the Cherokees for the purpose of carrying into effect the objects contemplated by the treaty of 1817. In this last treaty (that of 1819) it was decided that the Cherokees "who had already emigrated to Arkansas, and those who had enrolled for emigration, constituted ONE-THIRD *of the whole nation;* and it was agreed that the lands owned by them, with the annuities due under former treaties, should be divided in this proportion, which gave *two-thirds* to the *eastern* and ONE-THIRD to the *western* nation." The whole country east was then estimated to contain *twelve millions*, or more, *acres*—ONE-THIRD of which was ceded to the United States as the allotted share of the "western Cherokees," for which they received, in payment, *four millions two hundred thousand acres in Arkansas*. The annuities due the whole nation in 1819, amounting to $10,000, was also divided, and the *one-third* thereof was thereafter paid to the Cherokee nation west of the Mississippi.

The *Cherokee nation west*, thus organized, at the instance of the

United States, entered into a treaty with the Secretary of War in the year 1828, by which they exchanged their country in Arkansas, procured and paid for as above stated, for a country still further west, to which (in consequence of its *inferior* value) was added *three millions* of acres to the quantity procured by the exchange under the treaties of 1817 and 1819, besides fifty-six thousand dollars as *boot money*, with $8,760 for spoliations committed on them by the Osages and citizens of the United States.* In the ensuing year the western Cherokees were all settled upon the lands conveyed to them by the above mentioned treaty; and, by the treaty of February 14, 1833, concluded between commissioners on behalf of the United States and the chiefs and councils of the "*Cherokee nation of Indians west of Mississippi*," these lands, (with their boundaries defined,) containing *seven millions of acres*, with the use and occupation of all the lands belonging to the United States, lying west of the same, were confirmed to this nation, with a *fee-simple* title.

The western Cherokees, having a *national existence*, remained in the unmolested ownership and occupancy of the country thus conveyed and confirmed to them, until they were dispossessed by the operation of the treaty concluded between the United States and the *eastern* Cherokees of December, 1835.

Now we beseech your excellency to look at the position occupied by the two nations at the ratification of this treaty. The "western Cherokees," by the treaties of 1817 and 1819, had exchanged their portion of the eastern country, being *four millions of acres*, for the country secured to them in the west. The "eastern Cherokees" sold their portion of that country, being the *two-thirds*, or eight millions of acres, for *money*. They were to receive five millions of dollars, *besides a country in the west*, with $600,000 to defray the expenses of their removal, and pay the claims of their citizens against the United States. This sum for *removal* and *claims* was increased by an appropriation made by the act of June 12, 1838, *one million forty-seven thousand and sixty-seven dollars*, making, in the aggregate, $6,647,067. One million of dollars of this sum was applied, by the treaty, for national objects, and the balance (with the exception of $38,948 50, remaining in the treasury) has been paid out for the benefit of the eastern Cherokees exclusively. And what country did the eastern Cherokees obtain in the west, beside this amount of *boot money*, in exchange for their eight millions in the east, ceded to the United States by the treaty of 1835? Why the country which had been conveyed to the western Cherokees, first, in exchange for their four millions of acres by the treaties of 1817 and 1819, and afterwards in exchange for their lands in Arkansas by the treaty of 1828. This country, thus secured to the western Cherokees by the operation of the treaty of 1835, was made the *common property* of the Cherokees east as well as the Cherokees west; thus bringing across the Mississippi river the *two-thirds*

* See 5th article, treaty of 1828.

of the nation (as it existed *anterior* to the treaty of 1817) who had just *sold their lands for money*, to take possession, in proportion to their numerical strength, of the lands of the western Cherokees, which they obtained in payment for lands in the east, which they owned as *one-third* of the old nation, and ceded to the United States by the treaties of 1817 and 1819. Is it not manifest, therefore, that to place the old "western Cherokees" upon an equality with the "eastern Cherokees," (without taking into consideration the privations and dangers—the loss of life and property they endured and sustained as the early pioneers of that then savage frontier,) they must receive, in money, for their 4,000,000 acres ceded to the United States by the above mentioned treaties, just *one-half* of the price stipulated to be paid the eastern Cherokees for their 8,000,000 of acres ceded by the treaty of 1835! By which settlement they (the western Cherokees) would receive $2,500,000!! Or, should not this mode of settlement, as a matter of *principle*, be adopted, then the western Cherokees were entitled to payment for TWO THIRDS of their country west of the Mississippi, which they had purchased as before stated, the moment it was taken possession of by the eastern Cherokees! The value of the land for which they were thus entitled to payment was fixed by the United States in the treaty of 1835, by charging the Cherokees for lands of an inferior quality *sixty-two and a half cents per acre!!*

The undersigned have thus briefly traced the history of the rise and fall of the "western Cherokee nation," to bring the peculiar hardship of their present case and condition to the earnest attention of your excellency, and not with the vain view of changing the provisions of former treaties, under which they have suffered so much injustice. They are aware that their destinies are now linked to the treaty of August, 1846, and it is to procure a prompt and faithful execution of that treaty, under a construction which *common sense* and the evident intent and meaning of the *Indian contracting party* will give it. No *tribunal* is designated by that treaty to settle the claims arising under it; and in the absence of this designation the subject was referred to the department which, under the law, has administrative jurisdiction. The Commissioner of Indian Affairs, to whom it was referred, made a report, which, with the sanction of the Secretary of War, was communicated to Congress by your excellency on the 19th May, 1848. The settlement in this report shows that $6,647,067 have been invested and paid on account of the cession of land made by the eastern Cherokees in the year 1835, deducting a small amount remaining in the treasury. Of this sum, $1,979,198 94 have been paid on account of removal and subsistence. Mr. John Ross, as chief and agent of the nation, received $1,357,745 92 for removing something over thirteen thousand Cherokees, which, at the rate of $20 per head, (allowed by the treaty, and for which hundreds moved themselves,) would have only cost a fraction over $260,000! Here, then, was upwards of a million of dollars paid out as *per capita* money to the chief and agent who contracted for his people. Did the "western Cherokees" receive any part of this money? Not one dollar.

They were expressly excluded, by the 15th article of the treaty of 1835, from "all participation in the personal benefits" arising under it; and it was not until the year 1846, *ten years after its ratification*, that they were informed by commissioners appointed by your excellency, that they "had no exclusive title to the country conveyed to them," as already shown, "west of the Mississippi river," but that they were joint owners with the eastern Cherokees in the lands sold by the treaty of 1835, and, consequently, as "one-third" of the old nation, were entitled to an interest in them in that proportion. Hence, in the year 1846, after the western Cherokees had been contending for their rights lost by the treaty of 1835, upwards of ten years, they were informed that they were entitled to the *one-third* value of the land sold by that treaty, and to all the personal benefits arising under it! But, unfortunately, when the discovery of an error was made known, all, or nearly all, of the money appropriated had been expended for the use and benefit of the eastern Cherokees. Out of that vast amount the western Cherokees have not received a farthing, although they are justly entitled to *one-half as much as the eastern Cherokees*, being ONE-THIRD *of the whole nation*, as it existed prior to the treaties of 1817 and '19.

The Commissioner of Indian Affairs has found due (by the principle he has adopted for settlement under the treaty of 1846) $419,763 96. This is estimated as the value of the interest of the "western Cherokees" in the *eastern* and *western counties*, which has been referred to and described in this communication. The undersigned humbly beseech you, on behalf of their people, to intercede in procuring for them this appropriation during the present session. It is required by a solemn treaty stipulation. The "old settlers" have not yet received any money under the treaty of 1835. Whatever amount is found to be justly due them now, was due them immediately upon the ratification of that treaty in 1836. Let the sum found due by the Commissioner of Indian Affairs, upon a construction of the treaty most favorable to the United States, be appropriated without further delay, and let the disputed questions only be postponed for further investigation. It was not the "western Cherokees," but the counsel for the "eastern Cherokees," or government party, that refused to receive the sum found due by the department at this time, and petitioned to refer the settlement to the accounting officers. The "western Cherokees" are poor, and, having received no benefits under the treaties of 1835, they humbly pray that payment be made to them of the sum found due by the Indian Department, *and let the contested items in their claim* alone be deferred for future examination.

The second article of the treaty of 1846 gives the "old settlers" or "western Cherokees" the right to prosecute their claim *separate* and *distinct* from the government party of the nation. This right they claim, and intend to exercise, with the permission of the United States government, until their brethren, known as the "eastern Cherokees," disclaim the right to act for them, and will join them in using their best endeavors to have full justice done to

all the Cherokees. The treaty of 1835, by which the eastern Cherokees were made to relinquish all their country east of the Mississippi, has not yet been executed. The owners of the soil, which was held in common—the property of the poor as well as the rich—have not yet been paid the value of their common property. The large amount of money appropriated to carry the treaty into effect has been expended under extravagant contracts, made by the United States on account of removal and subsistence, and to pay debts or claims presented by *individuals* of the nation against the United States. In this way the appropriation has been exhausted without paying anything *directly* to the mass of the eastern Cherokee people as *per capita* money. The large sum paid (in which they were all interested, for removal) was paid to their chief and agent.

The undersigned, therefore, in pressing the claim of the western Cherokees upon your excellency's attention, for the reasons set forth in this appeal, do not desire to throw any obstacles in the way of the Cherokees known as the "government party" in obtaining the full amount of money, to be divided *per capita*, which is yet due them as the value of their lands sold by the treaty of 1835. All we ask is, that the sum found due the western Cherokees by the War Department shall now be appropriated as the *first payment to these people* of moneys due them more than twelve years!

In submitting this humble appeal to your excellency, we humbly request that the Secretary of War will make direct application to the appropriate committees of both houses of Congress for an appropriation of this money, due under a treaty stipulation, and, if he deems it expedient and proper, that he will accompany his application with copies of this our appeal.

We are, truly, your excellency's friends, and obedient servants,

JOHN L. McCOY,
Representative of old settler Cherokees.

His Excellency
The President of the United States.

The above memorial was prepared for the signature of Mr. Aaron Hicks, the delegate of the "old settlers," associated with the undersigned. But, although he approves of all it contains, yet he refuses to sign any paper, or make any demand on behalf of the "old settlers," except for $30,000 to be taken from their money to pay certain claims held by Messrs. Rogers and Duval, of Fort Smith, Arkansas, and others named in a schedule made by a committee of Cherokees last December.

The undersigned has been prepared at all times to appear with the counsel, regularly and openly appointed by the "old settlers" to attend to all their business, before the executive and legislative departments of the government, and urge a fair and just settlement under the treaty of August, 1846. He conceived it was wrong to ask for the payment of claims *against* his people, without, at the same time, requiring a just settlement of *their* claims against the United States, and an appropriation of the money due them, out of which they are alone able to pay their just debts.

He was a delegate in the city of Washington from the "old settlers" in the years 1843, 1845 and 1846, and is one of the signers of the treaty of August, 1846, under which a settlement is now claimed. He knows that contracts were entered into by the several delegations, and confirmed by the delegation who signed that treaty, which must be paid out of the money that may be found due under such settlement. To protect the interest of the western Cherokees, or "old settlers," therefore, he has uniformly recommended that a provision should be made in the appropriation made for the benefit of the "old settlers," that all claims held against these people, in their *collective* capacity, should be submitted to the Secretary of War, or other United States tribunal, for adjudication. In this way, only, can improper claims made for debts due by *individuals*, and not contracted for the benefit of the whole people in their *collective capacity*, be detected. And thus, also, when contracts are produced, it can be ascertained whether they have been made fairly and openly for the benefit of the whole people—that exhorbitant charges have not been made, and the contracts have been faithfully complied with by the other party. All just claims are binding upon the "old settlers" as an honest people, and should be provided for out of the *per capita* money, as they have no *national fund* out of which to discharge such claims.

I have the honor to be, very respectfully,
Your excellency's friend and servant,
JOHN L. McCOY,
Delegate.

WASHINGTON, *August* 8, 1848.

The undersigned, citizens of the Cherokee nation and signers of the treaty of August, 1846, as delegates appointed by the nation, have had submitted to them the above and foregoing memorial, signed by John L. McCoy, who is also one of the signers of the treaty of August, 1846—and knowing the wants and wishes of that portion of the Cherokees represented by Mr. McCoy, and that the facts and circumstances he has presented have existence, they cheerfully and cordially concur in the propriety and necessity of the application he has made for the benefit and relief of the "old settlers." If the appropriation of the money which has been found due by the United States government is not made at the present session, great distress and discontent will be produced among these people. The undersigned also concur in and approve of the suggestions made to your excellency, with regard to the payment of the just claims against the "old settlers," based upon contracts fairly made, and which have been faithfully complied with by those who were thus bound to render them service in their *collective* capacity.

Very respectfully,
W. S. COODEY,
RICHARD FIELDS.

To his Excellency the PRESIDENT.

D.

CHEROKEE NATION,
Near Fort Gibson, April 16, 1842.

To his excellency the President of the United States:

HONORED SIR: The undersigned, on behalf of that portion of the Indian family, long known as the "western Cherokees," beg leave to address you on a subject vitally important both to their nation and to the government of the United States. A crisis in their affairs has arrived which requires prompt and energetic action; and they enter upon the task assigned to them, by a solemn sense of duty, with sentiments of respect and veneration for the constituted authorities of the United States, which have heretofore governed all their actions. They have complaints to make which can no longer be with safety deferred; and they will endeavor, in doing so, to divest themselves of all unkind feeling against those from whom they have suffered wrong, and base their appeal upon provisions made by law and treaty stipulations.

At the close of President Jefferson's administration a council was held with the Cherokee people, upon a proposition to effect a *separation*, upon which occasion that venerated patriot speaks to them as follows: "The United States, my children, are the friends of both parties, and as far as can be reasonably asked, they are willing to satisfy the wishes of both. Those who wish to remove are permitted to send an exploring party to reconnoitre the country on the waters of the Arkansas and White rivers, and the higher up the better, as they will be the longer unapproached by our settlements, which will begin at the mouth of those rivers. When this party shall have found a country suiting the emigrants, and not claimed by other Indians, we will arrange with them and you the *exchange* of that for a just portion of the country they leave, and to a part of which, proportioned to their numbers, they have a right."

This was the assurance given by the President of the United States, on the 9th day of January, 1809, in reply to a petition from a deputation of the then existing two parties of the Cherokee nation, designated as the *upper* and *lower* towns. The whole communication breathes kindness and encouragement, and lays the ground work of all subsequent action upon the plan of organizing an Indian government west of the Mississippi river. It recognizes the division of the Cherokee tribe, and from that period they have been known as the *eastern* and *western*, or *emigrant* and *anti-emigrant* party. In 1817 the first treaty arrangement was entered into between the United States and the Cherokees, predicated upon, and in pursuance of, the promises made by the President in 1809, although many of the emigrating party had already located upon the lands referred to, on Arkansas and White rivers. The commissioners who negotiated this treaty had the whole previous correspondence between the government and Cherokees before them, and understood the intentions, wishes, and true interests of both par-

ties. Its third and fourth articles make provision for a final separation of the *western* from the *eastern* Cherokees, and expressly stipulates that their property shall thereafter be held separately, and that the annuities arising from the sale of their lands shall be divided between them in proportion to their numbers. The fifth article provides for the exchange of lands, and the interest conveyed by the United States is clearly vested in the western party.

In 1819, a convention was held by the honorable John C. Calhoun, Secretary of War, with a delegation of eastern Cherokees, who "expressed their earnest desire to remain east of the Mississippi river;" at which convention they stipulated for their future residence in the east, confirmed the separation from their western brethren, and agreed that their annuity should be paid, thereafter, *two-thirds* to the eastern and *one-third* to the western Cherokees.

But a few years had elapsed, after the consummation of this arrangement, when the western Cherokees again found themselves surrounded by white people, and the government manifested a desire to obtain the lands they occupied for its own citizens; accordingly, a new treaty was negotiated in 1828, between the Hon. James Barbour, Secretary of War, and a delegation of *western* Cherokees, by which the latter *exchanged their lands in Arkansas* for the country they at present occupy. The preamble to this treaty explains the causes which lead to its negotiation; and the 1st and 2d articles define the limits of the new country, with the solemnly pledged guaranty that *seven millions of acres, with a perpetual outlet west*, shall be and remain theirs forever. It was made exclusively with the *western Cherokees*. They were alone responsible for its conditions; and if the bargain had been a bad one—if the lands received in exchange had been found less valuable than those relinquished in Arkansas, they alone could suffer. No interest of their eastern brethern was sacrificed, or even involved in the bargain and sale, or exchange of these lands. The 7th article clearly establishes this position by the stipulation that the "western Cherokees will leave all the lands to which they are entitled in Arkansas, and which was secured to them by the treaty of 8th July, 1817, and the convention of 27th February, 1819," when not one acre of land was relinquished on the east of the Mississippi river, although an invitation is extended to the eastern Cherokees to join their western brethren, and the most liberal provision is made for emigrants, especially from the "chartered limits of the State of Georgia."

The undersigned can refer with pride to the progress of emigration under the treaty of 1828. The United States encountered no difficulty or delay in procuring the removal of the *western Cherokees* to the country assigned them. They came promptly and cheerfully into the wilderness; and, overcoming every obstacle incident to a first settlement, they in a short time dotted it with their habitations, and rich cultivated fields. When the commissioners came to treat with them in 1833, they were rapidly advancing in improvement and civilization. This treaty was concluded at Fort Gibson, on the 14th of February, 1833, and to its provi-

sions the attention of the chief magistrate is now earnestly solicited. It is the last to which the United States and the *western* Cherokees are parties; and upon its provisions we base our hopes of obtaining redress for the series of wrongs we have sustained, since the usurpation upon our rights under the treaty of 1835. Its caption distinguishes the parties to it, as "commissioners on the part of the United States, and the chiefs and head men of the *Cherokee nation of Indians, west of the Mississippi*, they being duly authorized and empowered by their nation." The preamble again designates the Indian party as the "chiefs and head men of the Cherokee nation, west of the Mississippi," and fully and conclusively proves that the United States and the *western Cherokees* were the sole parties to the treaty of 1833. The *eastern Cherokees* were consulted by neither party on the subject of this treaty; they had no delegation attending the council—offered no opinion or advice concerning the arrangement to be made, and manifested no anxiety about the settlement of boundaries which were intended to limit the Cherokee country forever. They were, at that time, entirely indifferent about the affairs of their western brethren, and remained quietly at home attending to their own interests.

Having now shewn the existence of two distinct and separate bands of the old Cherokee nation ever since the year 1809; that they divided their property by the treaty of 1817 and convention of 1819; that in 1828 the *western Cherokees* treated with the United States for an *exchange of lands*, as a separate and independent nation; and that this nation, thus constituted, is *the sole party in interest* with the United States to the treaty of 14th February, 1833; the undersigned now submit its provisions for your serious consideration.

The object of the government in making this treaty, as avowed at the time, was to adjust and settle the boundary lines between the Cherokees and Creeks and other neighboring tribes, about which there was some dispute, and also to fix, definitely and permanently, the boundaries of the Cherokee country, in accordance with the provisions of the treaty of 1828. These boundaries are established by the first article, and a title to the lands, in *fee simple*, confirmed to the Cherokees, with the solemn promise, on behalf of the United States, "that *letters patent* shall be issued *as soon as practicable* for the land hereby guaranteed." This treaty contains no proviso for the admission of the eastern Cherokees, similar to that contained in the 4th article of the Creek treaty, concluded at the same time, which expressly provides "that the lands assigned to the Muscogee Indians shall be taken and considered as the property of *the whole Muscogee or Creek nation*, as well of those now residing upon the land, as the great body of said nation who still remain on the *east side of the Mississippi*." No condition of this kind can be found in the Cherokee treaty. It contains a complete and absolute surrender by the United States to the western Cherokees, of all title and jurisdiction to or over the ceded lands. It makes no reference to, or reservation under, any existing law of the United States; but on the contrary, it repeals

by its 3d article that clause in the treaty of 1828, wherein the United States "agrees to give the Cherokees a plain set of laws and survey their lands at the cost of the government, whenever they desired to own them individually."

The act of Congress of May, 1830, cannot affect the tenure to these lands, as no reference is made to it by the treaty under which the Cherokees derive their title; and that law is intended exclusively to enable the President to effect *an exchange of lands* with Indians residing east of the Mississippi for an equal number of acres west of said river, in pursuance of the long settled policy of the government. There was no *exchange of lands* made by the treaty of 1833. It only confirmed the title vested in the Cherokees by the treaty of 1828, which was concluded two years anterior to the passage of the law referred to. Hence, the undersigned declare the opinion always entertained by their people, that a full and absolute title, in *fee simple*, to the *seven millions of acres with the outlet*, passed from the United States to the Cherokees by the treaty of 1833, as fully and effectually as any cession of land could be made by treaty, concluded between the United States and Spain or France, or any other government or people. This title was confirmed by the ratification of the treaty on the 12th of April, 1834, and no *subsequent* law or treaty stipulation can change it, or impair the rights conveyed and guaranteed, without the consent of the western Cherokees as a party to such law or treaty.

Having thus, we humbly believe, clearly shewn by existing treaty stipulations that the *western Cherokee nation*, as organized under the treaty of 1817, are the rightful owners of the soil now contended for by the *eastern Cherokees*, the undersigned present this humble memorial to you as the chief magistrate of the United States, and implore your aid and protection in this effort on behalf of their people to obtain their just rights. The western Cherokees, by their energy and perseverance, obtained this last resting place for their nation; they secured to themselves and their posterity a territory embracing altogether at least fourteen million acres of land, and made other provision for the benefit of their people. They were the pioneers who first tilled the ground on the extreme western border of your extended territory. Placed in the vicinity of the then wild and savage tribes of this frontier, and subjected to their long continued depredations, the first years of their emigration was exhausted in protecting their property and themselves against incursions from their lawless neighbors. Thus did the western Cherokees, the old settlers, the pilgrims under the treaty of 1817, toil and struggle to obtain the settled home in the far west, promised them by the President of the United States as early as 1809. Where are these people now, and where are the rights and immunities so often promised and at last solemnly pledged to them? Why, they are aliens in their own country, with another people and other laws ruling over them. And this usurpation has been perpetrated under the apparent sanction and authority of the New Echota treaty of 1835, not by those who negotiated that treaty with the United States, but by the very men who opposed the arrange-

ment from its inception to its confirmation, and who do not now acknowledge its validity.

The undersigned do not complain against their eastern brethren for making that treaty, but they do complain and protest against some of its conditions. It was a transaction between the United States and the *eastern Cherokees*, bargaining for a cession of the lands held by the latter *east of the Mississippi*, in which the western Cherokees had no concern; it could not legally affect any rights secured to them by former treaties, without their full and voluntary consent and approbation. But what are its stipulations? The United States contracts to pay the Cherokees five millions of dollars for a relinquishment of all their lands and possessions east of the Mississippi river; and then agrees to give them a country in the west, in accordance with the provisions of the act of May 28, 1830. And the country thus provided and given in exchange for that obtained from the Cherokees east, embraces the very tract of land solemnly guaranteed to the western Cherokees by the treaty of 1833; and for which, by the conditions of that treaty, they ought then to have been in possession of a patent from the United States.

The undersigned earnestly solicit the President's attention to this portion of their complaint. They ask him to examine the provisions of the treaty of 1833, which has never been repealed or annulled by any act to which the western Cherokees have been a party, and then read the conditions of the new Echota treaty for a plain and palpable violation of those provisions. The United States assumes, by the treaty of 1835, to be the owner of the country transferred to the *western Cherokees* by the treaty of 1828, in exchange for their lands in Arkansas, and confirmed with a *fee simple* title by the treaty of 1833, and cedes this country, whole and entire, to the eastern Cherokees, either as a *gratuity* or *in exchange* for their lands east of the Mississippi. In order to obtain a clear understanding of the terms of the new Echota treaty, we will quote such portions of it as have a bearing upon the present question. The preamble gives a resolution of the Senate, which says, "that a sum, not exceeding five millions of dollars, be paid to the Cherokee Indians, for all their lands and possessions east of the Mississippi river." This would be, to all intents and purposes, a sale and purchase, with a full consideration paid. The first article, however, varies the terms expressed in the above resolution, and reads thus: "The Cherokee nation hereby cede, relinquish and convey to the United states, all the lands owned, claimed and possessed by them east of the Mississippi river, and *hereby release all their claims upon the United States for spoliations of every kind*, for and in consideration of the sum of five millions of dollars, &c." But the same article contains an agreement to submit this question again for the consideration of the Senate.

The second article then describes the boundaries of the country secured to the western Cherokees by the treaty of 1833, quoting the very words of that treaty; and then, preparatory to its cession to the eastern Cherokees, this article provides that "whereas, it is

apprehended by the Cherokees that, in the above cession, there is not contained a sufficient quantity of land for the accommodation of the whole nation, on their removal west of the Mississippi, the United States, in consideration of the sum of *five hundred thousand dollars*, therefore hereby covenant and agree to convey to said Indians, and their descendants, by patent in *fee simple*, an additional tract of land," which is described and "estimated to contain eight hundred thousand acres." By the third article, the whole country is then conveyed as follows: "The United States also agree that the lands above ceded by the treaty of February 14, 1833, including the outlet, and those ceded by this treaty, shall be included in one patent, executed to the Cherokee nation of Indians by the President of the United States, according to the provisions of the act of May 28, 1830." The undersigned now submit the question, "would not the annexation of the additional tract of eight hundred thousand acres, for a consideration paid therefor, clearly prove that the $5,000,000 was to be received as payment in full for the lands ceded in the east, and that the party who sold it must provide a country for themselves, if the United States had not, at the same time and by the same act, ceded to them the lands of the western Cherokees?" The inference to be drawn from these acts is plain and manifest. The United States are either bound to pay for all the lands conveyed to the eastern Cherokees, out of its own funds, or else the balance of the five millions of dollars, after deducting the $500,000, paid for the additional tract, should be applied for that purpose. The government, it is presumed, did not intend to pay, both in *money* and *lands*, for the possessions relinquished by the eastern Cherokees, otherwise it would not have demanded payment for *its own lands* given in exchange.

By the convention of 1819, it was estimated that the western Cherokees comprised one-third of the old nation, and the annuities have since been divided and paid in that proportion. If, then, they were possessed of seven millions of acres, with an outlet of the same extent, estimated together as containing *fourteen millions of acres of land*, and it was proposed to purchase of them a part of it for the accommodation of their eastern brethren, in proportion to their numbers, the western Cherokees would be entitled to payment for upwards of *nine millions of acres;* and the value placed upon it should be made to correspond with the price paid for the "additional tract" sold by the United States to the eastern Cherokees, by the same act under which it was conveyed. Is not this a fair and plain presentment of the facts of the case? The United States sold to the eastern Cherokees *eight hundred thousand acres of land*, and conveyed to them, at the same time, about nine millions of acres more, belonging to another party, without the consent of that party, or paying any value therefor to the rightful owners. Thus have the western Cherokees been dispossessed of two-thirds of their landed possessions; and the act has been committed by the government of the United States, who claimed the ownership after the Indians had obtained lawful possession, and dis-

posed of them, by the treaty of 1835, as it would dispose of any of the public lands. Would any people or nation upon the face of the earth, provided for as the western Cherokees, voluntarily and tamely surrender possession of their lands without receiving an equivalent? or would any nation of people, governed by rules of law and equity, forcibly take such possession of the property of another, or obtain it without hindrance because there existed no power of resistance? Not one single benefit has been conferred upon the western Cherokees by the new Echota treaty, except the addition to the general school fund, provided for by the tenth article. The various shops and mechanics, now so beneficially employed for the nation, were provided for by the treaty of 1833; and no addition is made to these provisions by the treaty of 1835. The only party intended to be benefitted by that treaty, according to the stipulations of the fifteenth article, was the Cherokees then residing east, and those who had enrolled for emigration since June, 1833. On the other hand, not only the title to the land has been taken away or changed, but other rights and privileges of the western Cherokees are curtailed, and all their interests injuriously affected by its provisions.

Now, we seriously ask, "How did the United States *regain* possession of the lands conveyed to the western Cherokees by the treaty of 1828, or where did the government obtain the power to exercise possessory control over it, after the treaty of 1833?" That treaty had been approved by the President and ratified by the Senate of the United States, and was, in December, 1835, binding and obligatory upon both contracting parties. It had never been annulled or repealed by any act to which the western Cherokees were a party; and they never granted, or acquiesced in, the control assumed by the United States in 1835; but always have, and do now, denyt he existence of the power then exercised. Let us examine further the treaty of 1835? By the first article, as has already been shown, the eastern Cherokees cede to the United States all their lands and possessions east of the Mississippi, for and in consideration of the sum of five millions of dollars, which is to include all their claims for spoliations of every kind; but, as doubts had arisen about the intention of the government in making this stipulation, the question was again "submitted to the Senate for their consideration and decision." Now, let us turn to the supplementary articles of this treaty, agreed upon on the first day of March, 1836, and we find that the *five millions of dollars* was *fixed as the value of the Cherokee lands east of the Mississippi!* and that the sum of $600,000 *was provided to pay the expenses of their removal west, and to liquidate all their claims of every description* against the United States not otherwise expressly provided for. This sum of five millions of dollars, therefore, cannot be touched for any expenditure under the treaty, except $450,000 required by the tenth article, and $500,000 stipulated for in the second article as the consideration to be paid to the United States for the cession of the additional tract of land. Every other claim is embraced within

the provisions of the third supplementary article, and cannot be taken from the *five millions*, to be paid as the value of the lands relinquished by the Cherokees. The balance of this money, therefore, amounting to four millions and fifty thousand dollars was due to the Cherokees, upon the ratification of the treaty, and should have been equally divided among them, as provided for in the fifteenth article, which denominates the recipients as "the people belonging to the Cherokee nation *east*, and such Cherokees as have removed west since June 1833." This money, which is called the *per capita* or *head right* money, has been long and anxiously looked for by the Cherokee people; and although the western Cherokees are debarred from all benefit by the terms of the treaty, yet they sympathize with their eastern brethren, and ask the question, what has become of this money? The balance, of upwards of four millions, as we have shown, has not been expended for any legitimate purpose; and it is doubtless in some safe depository, intended to be applied in effecting some great national measure. The first foot hold was obtained in this country by the eastern Cherokees, under the promise that their western brethren should receive a proportionate share of this fund, and participate in all the benefits of the treaty of 1835; and the same deception, practised upon the credulous of our people, procured the execution of an instrument in writing, styled "*an act of union between the eastern and western Cherokees*," dated July 12, 1839.

The undersigned, a remnant of the old Cherokee settlers, who left the home of their fathers, east of the Mississippi, a quarter of a century ago, do now, for themselves and on behalf of the western Cherokees, most solemnly protest against that act of union being taken as their *act and deed*, or that, under its provisions, they can be divested of any rights guaranteed by the former treaties. They do, likewise, most solemnly protest against the occupancy of their lands under the treaty of 1835; and recognize no treaty of stipulation conveying title to the lands they now occupy, and claim as their country, except those concluded in 1828 and 1833. And, lastly, they do solemnly protest against the exercise of any right or jurisdiction over their country by a delegation of Cherokees who have recently gone to the city of Washington, purporting to be a delegation representing the Cherokee nation.

The undersigned, who have been appointed a committee, at a convention of the *western Cherokees* now in session, present this humble memorial to you, as the chief magistrate of the United States, with the fervent prayer that you will maturely consider their case and procure justice to be done to the Cherokee nation. A delegation of the old men of the nation, formerly chiefs and principal councillors, who signed the treaties of 1817, 1828, and 1833, have been this day appointed to visit the seat of government, clothed with full powers to settle and adjust all the affairs of their nation. When they meet you, they will submit distinct and plain propositions for your consideration; and as they believe their claim is founded upon sound principles of law, justice, and humanity,

they hope, under the protection of a kind providence, for the happiest results.

With sentiments of respect and esteem, we are your friends,

THOS. WILSON,
S. C., and signer of the treaty of 1817.
JOHN ROGERS,
Who signed the treaty of 1828, *and of* 1833,
as president of national committee.
his
GLASS, ×
mark.
Who signed treaty of 1833, *as president council.*
his
JAMES + CAREY or CHICKEN COCK,
mark.
his
JOHN + SMITH,
mark.
Signer of treaty of 1817.
his
CAPTAIN + DUTCH,
mark.
THOS. L. ROGERS.
Committee on behalf of the Western Cherokees.

Witnesses present at signing:
WM. D. SHAW,
THOS L. ROGERS,
District Judge, Cherokee nation.
PETER HARPER.

E.

Argument submitted by counsel for old settlers, in relation to misapplication of funds, by a payment made to John Ross, pricipal chief; and showing that this money, if refunded, might be properly applied to the discharge of other debts, &c. Read and submitted, July, 1846, *by S. C. Stambaugh.*

To the honorable commissioners on Cherokee affairs:

With the permission of the honorable board, we will now proceed to review that portion of the argument made by the advocate of the "government," or Ross party, which goes to show a misapplication of funds under the treaty of 1835. At the first and second meeting of this council, that gentleman said, with an air of kind forbearance, which appeared really paternal, that he had not the least objection to the old settlers and treaty party obtaining something from the United States in the shape of a "gratuity." Indeed, he proffered his aid in enabling them to obtain a reasonable

moiety on that account, and said that if he was let alone in prosecuting the claim of the nation, he would amply provide for them; but if they dared to oppose any claim preferred by the "Cherokee nation," or ask that any money which migh be allowed them, should be taken from the treasury of the nation, he might feel constrained to turn *attorney for the United States*, and then their doom would be sealed, for *he would show that they had not a vestige of claim either upon this government, or the Cherokee nation!*

It is not for us to say whether this honorable board did not feel sincerely grateful to the gentleman for his kind offer to enlighten it upon an important branch of its investigation, and thus relieve it from much of the labor necessary to discharge its onerous duties, as well as shield the commissioners from the impositions attempted to be practiced upon them by insignificant factions of the Cherokee nation. But, so far as the "old western Cherokee nation" is concerned, we told him then, and we tell him now, that we desire his guardian care as little as we regard his threats. Our tongues cannot be silenced, or our hands palsied, by any conciliatory air or language he can assume. Our business, as we have told him before, is with the government of the United States, who, by law, usage, and humanity, is bound to protect us in the rights which it has guarantied to us by solemn treaty compact, whenever we call for that protection. We will repeat, however, that, although we contend that the "eastern Cherokees," now called the "Cherokee nation," are intruders upon our lands; that they have no claim to them, either conferred by the United States or our own nation; still, not to be outdone in generosity or liberality by our patronizing adversary, *we* will interpose no objection to the United States giving these people a country in the west, as a "*gratuity*," notwithstanding they have made an attempt to prove that we, the "*old western Cherokee nation*," never owned a foot of land east or west of the Mississippi. But we desire, before that country is thus disposed of, it must first be purchased from the rightful owners.

The gentleman, in his argument, read before this honorable board on Monday, undertook to put a construction upon the several articles of the Cherokee treaty of 1835, and to show that a large amount of money has been misapplied in the execution of that treaty, as far as it has progressed. We can hardly say that we could gather sufficient information from his argument to enable us to know what that construction really is, except so far as it relates to expenditures made on account of the *removal and subsistence of the Cherokees*. On this point he is very explicit; for the public records show that his *distinguished client*, the great "embodiment" of the Cherokee nation, received, on this account, the very *insignificant* sum of *one million three hundred and fifty-seven thousand seven hundred and forty-five dollars and eighty-six and a half cents!!!* Yes, sir, he received this amount of funds under the name of "chief and agent of the Cherokee nation," out of appropriations made to carry into effect a treaty, which he and his followers, long *before* and *since* they pocketed the money, declared to

be "*fraudulent, spurious,* and *of no binding effect upon their nation!*"

In the argument of the counsel for the nation, whose chief and agent received this money, he dwells at considerable length upon the terms of the contract entered into between General Scott, and Mr. Ross and his associates, in August, 1838. He boldly asserts that it was expressly understood and declared by General Scott, at the time he closed that contract, that the *money was to be paid by the United States,* and have no reference to the Cherokee fund! He also tells us, with as much sanctity as if the fact was really so, that it cost no more to remove the Cherokees under that contract, than it would have cost to remove them by government agents, or in accordance with the commutation provision contained in the 8th article of the treaty. If we remember his remarks, he also acknowledged that the NATION made a *small profit* in this contract, but as it enured to the benefit of the whole nation, that could not be objected to.

Now, although we do not profess or desire to become the *attorneys for the United States,* for we believe their interests will be sufficiently guarded, yet, we cannot suffer the gross impositions here attempted to be practised to pass off without entering our solemn protest against it. We reassert, over and over again, that the old settlers are in no way interested in the treaty of 1835, except so far as it interferes with our claim to the country west, and the rights confirmed to us by the treaties conferring *title* to that country upon the "old western Cherokee nation;" but, inasmuch as the government of the United States is required to refund a large amount of money improperly applied, as is alleged, in carrying into effect the provisions of the treaty of 1835, and that money may, in part, be taken to satisfy the claim of the "old settlers;" we deem it our duty to throw all the light we can upon the subject, so far as those making the demand may be implicated in producing the *improper expenditure.*

It is not, therefore, the business of the counsel of the "old settlers," nor do we intend, at this time, to discuss the question of misapplication of funds under the treaty of 1835. We must say, however, that there are documents already in possession of the honorable board, submitted by the counsel for the treaty party and "old settlers," which will throw more light upon the subject than has been presented by the learned counsel for the party calling itself the Cherokee nation. In his late argument he has entirely omitted the provision contained in the tenth article of the treaty, which stipulates for the appropriation of $300,000, on account of *spoliations.* And if he alluded at all to the second article of the supplementary treaty, concluded March 1, 1836, we did not notice it. That article, taken in connexion with the third supplemental article, qualifies and gives character to the original treaty, so far as the important question is involved, whether removal, spoliation and other claims held by *individuals,* under the treaty, are to be paid out of the money allowed to the Cherokees for their lands, or separately by the United States. A reference to these articles, as

ratified by the Senate, will show what that honorable body intended by the resolution mentioned in the preamble and the first article of the original treaty. The gentleman has also made another very important omission in not bringing before the board the conditions of the sixteenth article of the treaty, which stipulates, *on behalf of the Cherokees*, that they will remove from the ceded lands *within two years after its ratification!*

Without going into an argument, at present, to prove what has already been clearly shown, that Mr. Ross and his adherents did not remove within the two years specified in the treaty, and cannot legally claim any benefit under its provisions, we will at once come to the celebrated contract with General Scott, entered into in August, 1838, and pledge ourselves to show, beyond contradiction, that Mr. Ross was aware, at the time he made that contract, that the funds out of which he was to be paid belonged to the Cherokee people, under the provisions of the treaty of 1835. We will then see whether he is not legally and morally bound to account to his people for the amount which should go to them, as *per capita* money, under the provisions of that treaty. This will certainly be a saving to the United States of upwards of a million of dollars of the *misapplied* money, as Mr. Ross, as the *agent* and "embodiment" of the nation, will surely be able to satisfy his people that *they have already received* $83 25 *of their per capita money*, which was paid to him as their "chief and agent" under the contract with General Scott in August, 1838!

John Ross received under that contract, as "AGENT AND PRINCIPAL CHIEF OF THE NATION," $1,357,745 86, which he alleged was a claim of the CHEROKEE NATION *on account of removing themselves!* The account current and all the abstracts rendered by this "*chief and agent*" are headed thus: "*The United States in account with the* CHEROKEE NATION, *for the expenses incurred in the removal of the Cherokees, under an arrangement with General Winfield Scott.*" The last account rendered, and upon which the money was afterwards paid, is dated May 18, 1840. Under the above caption the whole claim is presented as amounting to $1,357,745 86. Credit is then given for $776,398 98, received on requisitions drawn by Captain Page, United States disbursing agent, and the balance is shown as follows: "Balance due the CHEROKEE NATION $581,346 88½." The account is then certified in the words and figures following, viz: "I certify that the foregoing account, amounting to $1,357,745 86½, is accurate and just, and that the balance of $581,346 88½ is due, as stated. [Signed] JOHN ROSS, *principal chief* and superintending agent of the Cherokee nation for Cherokee removal."

A full history of the proceedings connected with this contract of the "*Cherokee nation for their own removal*," will be found in document 288, H. of R., 3d session 27th Congress, heretofore cited. At page 2 of that report, the Committee on Indian Affairs have estimated the amount paid each Cherokee, under this arrangement, at $103 25. If the number thus removed was 11,721, as shown by the receipt given to Captain Page for the payment credited in the account rendered by the nation, through Mr. Ross, then each emi-

grant was entitled to a fraction over $124! Mr. Ross, however, claimed for the removal of 13,179 souls. The "treaty party" and other Cherokees, removed in anticipation of the provisions of the treaty of 1835, must be entitled to the same consideration; and assuming that $103 25 per head was allowed and paid to the Cherokee people under an agreement between the *United States and that nation*, they can claim the difference between $20 per head and the above sum, which would give to each of them an additional sum of $83 25. They can adduce in support of this position the evidence furnished by the treaty; by the proceedings upon which the above contract is based; and by the act of June 12th, 1838, making the last appropriations to carry the treaty into effect.

By reference to the proceedings which resulted in the contract with General Scott in August, 1838, (which will be found in Rep. 288, above cited,) the first proposition of the Cherokee nation to remove themselves will be found in pages 4 and 5. A resolution of the national committee and council is there introduced, which declares, "that it is the decided sense and desire of this general council that the whole business of the emigration of our people shall be undertaken by THE NATION; and the delegation are hereby advised to negotiate the necessary arrangements with the commanding general for that purpose." John Ross, principal chief of the nation, was at the head of this delegation. General Scott then required them to make a proposition, which they did, estimating the cost of removal at $65 88 per head, which was afterwards increased to $66 24 per head. This estimate, General Scott, in his letter to the delegation, dated August 1st, 1838, (page 10,) pronounces an "extravagant one," and he assigns as a reason for not rejecting it, that "*the whole expense of the emigration is to be paid out of appropriations already made by Congress, the general surplus of which is to go to the* CHEROKEE NATION in various forms, &c. Again, in his letter of acceptance, dated August 2d, he says: "As the CHEROKEE PEOPLE are EXCLUSIVELY *interested in the cost as well as the comfort of the removal*, I do not feel myself at liberty to withhold my sanction."

Thus was the arrangement entered into by the *Cherokee nation* for the removal of the people of the nation at the rate of $66 24 per head. It was perfectly understood that the funds of the nation were responsible for the payment on this account. That *nation* afterwards received, through their accredited *chief* and *agent*, at least $103 25 per head!!

The evidence thus adduced, clearly shows that this was *a removal of the Cherokees yet remaining east of the Mississippi, undertaken by themselves*, and that the money they were to receive on this account was to be paid out of the *appropriations made to effect the removal of the Cherokees under the provisions of the treaty of* 1835. If Mr. Ross and his followers *did not* remove under this treaty, as they have often solemnly averred, then they ought not to have been paid out of the moneys appropriated to carry that treaty into effect, or have settled upon the lands of the "western Cherokees" *under its provisions*. But, taking it for granted that

the removal was effected under the sanction and provisions of that treaty, the inquiry then is "*What are its provisions in this respect?*" The 8th article stipulates for the removal of all the Cherokees then east of the Mississippi; and such Cherokees as desire to remove themselves, and are capable of doing so, "shall be allowed in full for all claims for the same, TWENTY DOLLARS for each member of their family."

The leaders of the treaty party, and their followers, emigrated under the provisions of this article; and those who accepted the commutation money declared it to be adequate to meet all their expenses, and that they had a balance remaining on their arrival in the country west. Those who emigrated under the treaty of 1828 received $18 per head, in accordance with an estimate made by the commissary general. *John Ross and his followers were Cherokees*, and were called the "*Cherokee people.*" They *desired to remove themselves;* and, in the language of the 8th article, were "*permitted to do so.*" Were they, then, entitled, under the treaty, to more than $20 per head for their removal? The large amount paid to them was taken from the fund *appropriated to carry the treaty into effect!* Could this be done without a violation of its provisions, unless the surplus, *above twenty dollars*, was paid to them as *per capita money*, to which they were entitled out of the proceeds of the sale of their country, in accordance with the provisions of the 15th article?

Assuming the facts set forth in these propositions to be correct, then Mr. Ross as "chief and agent of the nation," received for *his people one million two hundred and ninety-four thousand one hundred and sixty-five dollars and eighty-six and a half cents more than they were entitled to for their removal* under the treaty! If he has not paid over this vast sum to his people, *for whom he claimed and received it*, they must look to him for a settlement. The United States is not accountable. The Cherokees who removed under his agency can be charged with it in the settlement of any claims they may now present against the United States, and thus can upwards of a million of dollars be credited to the United States on a payment of *per capita* money.

It has been argued that Mr. Ross, as agent for the nation, was not paid this money under the provisions of the treaty of 1835, but under the provisions of the second section of the act of Congress, approved June 12, 1838, which made an appropriation *especially for this payment by the United States*, without reference to the Cherokee treaty. Let us look at the provisions of this section. It will be found at pages 778 and 779, ninth volume of the Laws of the United States, and enacts as follows: "That the sum of $1,047,067 be appropriated, &c., in full, for all objects *specified in the third article of the supplementary articles of the treaty of* 1835 between the United States and the Cherokee Indians, and for the further object of aiding in the subsistence of said Indians for one year after their removal west: *Provided, That no part of the said sum of money shall be deducted from the five millions stipulated to be paid to said tribe by said treaty!*" It will be observed that "*removal*

of the Cherokees" is not mentioned in this law, otherwise than by reference to it, as one of the items "specified in the third supplementary article of the treaty;" whereas, the "*subsistence* for one year after removal" is mentioned, because it is not one of the items "*specified*" in that article. Now, let us examine the third article of the supplementary articles, and ascertain its character. That article stipulates "that the sum of $600,000 shall be and the same is hereby allowed to the Cherokee people, to include the expense of their *removal* and all *claims of every other nature and description against the government of the United States*, not herein otherwise expressly provided for; and to be *in lieu of the said reservations and pre-emptions, and of the sum of* $300,000 *for spoliations described in the first article of the above mentioned treaty.*"

These supplementary articles were ratified with the original treaty, and formed part of that compact. The 3*d article* stipulates to supply not only money for the removal of the Cherokees, but for the payment of all claims therein specified. It contains nothing which can alter the conditions of the 8th article, in regard to the amount to be allowed Cherokees desirous of removing themselves. Those of the "treaty party" who removed themselves, were allowen $20 per head, according to the provisions of the 8*th article of the treaty*, and yet they were paid out of the money *appropriated under the* 3*d article of the supplement*, and so was every claim for *removal and subsistence*, prior to the passage of the act of June 12, 1838. Does that act authorize a different construction of the treaty, or appropriate money for any single or specific object? Certainly not. It makes the appropriation expressly for the purpose of carrying into effect, "*the objects contemplated by* 3*d supplementary article*," and for the further object of *subsisting* the Indians after removal.

In the report last above referred to, numbered 288, House of Representatives, 3d session 27th Congress, at page 52 and 53, we find how the $1,047,067, appropriated by the above act was disposed of; and the spectacle there presented, it will be found difficult to account for. The sum of $49,214 72, is paid to claimants for reservations, improvements, and spoliations! $776,398 98 is paid to John Ross, as agent for the Cherokee nation! $154,167 37 for removal, transportation, and subsistence of the Cherokees, and for the pay and expenses of *superintendents, agents, interpreters, and conductors, and hire of wagons, teamsters, and steamboats*, and all objects of a *contingent nature!* $1,140,000 paid individuals for COMMUTATION OF TRANSPORTATION AND SUBSISTENCE, *who removed themselves*! and for *feeding and clothing* poor and distressed Cherokees, $33,130 71.

Here we have the expenditure of the *one million, forty-seven thousand and sixty-seven dollars*, by the act of June, 1838, accounted for, with the exception of $33,015 22 cents, shown by the report as remaining in the hands of certain disbursing agents. Has this appropriation been expended according to law, is a question now seriously asked? *John Ross* received out of this amount, for the removal of the *Cherokee nation*, $776,398 98. Is such payment warranted by the LAW making the appropriation, or by the TREATY

it is intended to carry into effect, which only authorizes the allowance of $20 per head to *Cherokees who removed themselves*? Another payment of $1,140 is made to Cherokees who removed themselves, "for commutation and subsistence." How much were they allowed per head? There is $33,130 71 cents paid for feeding poor and distressed Cherokees! Does the law making the appropriation authorize this payment; or is it provided for in the 3d article of the treaty? The 3d section of the law of June, 1838, appropriates $100,000 for the relief of poor and *distressed* Cherokees; but that has nothing to do with the appropriation made by the second section.

Thus it appears that although the appropriation of *one million, forty-seven thousand and sixty seven dollars* was intended to embrace all the objects specified in the third supplemental article of the treaty, only forty-nine thousand two hundred and fourteen dollars and seventy-two cents, were paid in liquidation of any claim *specified in that article*, other than for the "removal of the Cherokees."

The question is now submitted to this honorable board, whether the money appropriated by the act of June, 1838, has been lawfully expended? It is well for the Cherokee people, the individuals of the nation who were the owners *in common* of the lands ceded by the treaty of 1835; the lowest among them possessing as much interest as the proudest and wealthiest chiefs, that the present tribunal has been created, and invested with full power to settle this question. It is equally important to the United States, for the board of commissioners provided for by the 17th article of the treaty, to examine and adjudicate all claims arising under it, is about being renewed, and there remains in the treasury but a small fraction over one hundred thousand dollars of all the money appropriated to carry the treaty into effect, and that amount is the remnant of the $5,000,000! If it is decided, upon the questions now raised before the board, that this fund cannot be applied to the payment of reservation, improvement, spoliation and other private claims arising under the treaty, then the United States must, at once, raise means to supply the deficiency and discharge their obligation imposed by the 17th article, which makes the decision of the commissioners "*final*, and on their certificate of the amount due the several claimants, they shall be paid by the United States." A joint resolution of Congress, passed in 1844, makes these certificates payable by the Secretary of the Treasury on presentation.

As we have already said, the number of Cherokees removed by Mr. Ross, according to the estimate of Captain Page, disbursing agent, was 11,721. Mr. Ross, in his final settlement, however, claimed for 13,179 souls. We will take his estimate, and allowing *twenty dollars* per head, in compliance with the terms of the treaty, the whole expense of removal would have amounted to $263,580. Subsistence for the same number of Indians, for one year after their removal, at $33 33 cents, would cost $440,300. Deducting these two items from the appropriation of $1,047,067, and it leaves in the treasury $343,179; which could legitimately be applied to the liquidation of private claims, in accordance with the stipulations of

the 3d article of the supplementary treaty; and as was intended by the Department of War, which can be seen by the estimates sent to Congress, upon which the act making the appropriation was based.

But instead of this fund being sufficient to liquidate all the claims of the Cherokees contemplated by the 3d supplemental article, it is entirely consumed for transportation and subsistence, with the exception of $49,214 72 paid for reservations, improvements and spoliations. And this is not all. After this appropriation is thus absorbed, we find that $581,346 88 have been paid to Mr. Ross, and $674,527 97 to Glasgow and Harrison for transportation and subsistence of the Cherokees removed under the General Scott contract, out of the five million fund allowed the Cherokees for their lands and possessions, east of the Mississippi.

Before we proceed to say anything further concerning the misapplication of this *five million fund*, however, we deemed it just and proper to state, in justification of the department intrusted with the disbursement of that fund under the treaty, that it was not touched for the payment of private claims, until the appropriations, made under the provisions of the 3d supplemental article of the treaty was exhausted. The Commissioner of Indian Affairs* (Mr. Harris) entertained the opinion that the $600,000 appropriated by that article, was the only fund chargeable with the removal and subsistence, as well as all the private claims provided for by the treaty; and that if, upon examination, this fund should be found insufficient to satisfy all the claims, then they must be paid *pro rata*. It was under a conviction that the $5,000,000, which belonged to all the citizens of the nation for the sale of their lands, could not be encroached upon to pay the claims of individuals against the United States, or used for the removal of the Cherokees yet remaining east; that the appropriation of June, 1838, was asked for by the Department of War. When the additional fund thus provided became exhausted, payment only commenced out of the $5,000,000, and refused by the accounting officers of the government, until authorized by opinions given by the Attorney General of the United States. The last of these opinions, I believe, is dated February 3, 1838, and will be found in the published volume of Attorney General's opinions, at page 1165–'6.

But the payment to Mr. Ross, of $581,346 88½, or rather $486,939 50, after deducting from the first amount a claim of Lewis Ross, of $92,781 50, and another claim of $1,625 18¼ was *not* made in pursuance of that opinion, but, on the contrary, it was made in violation of all law and its payment directed, as the public records show, by an irresponsible officer of the government, who signs his name as "*Acting Secretary of War.*" There is something strange and mysterious connected with this extraordinary payment. That claim was rejected for reasons assigned at length, by the Commissioner of Indian Affairs and Secretary of War, under Mr. Van

* Mr. Harris's letter upon this subject, to Lieutenant Van Horne, disbursing officer, is dated.

Buren's administration. It was twice appealed from their decision *to the President*, and *twice rejected by him*. The President's views upon this subject will be found on pages 24 and 25, of report 288, already cited. This decision, according to all usage of the government, was a final rejection of the claim by the Executive Department. The only recourse then was an appeal to Congress, and the case was taken before that honorable body. The Hon. John Bell was then chairman of the Committee on Indian Affairs, in the House of Representatives, but he could obtain no relief for his Cherokee friend in that quarter.

We beg it here to be remarked, that President Van Buren's last rejection of this claim is endorsed upon an appeal made to him by M. St. Clair Clarke, esq., as counsel for John Ross and others, dated January 7, 1841, less than two months before he retired from office. Mr. Tyler was inducted into the Presidential chair on the 4th of March, 1841, and *John Bell* was appointed Secretary of War. The rejected claim of John Ross and others was then again brought before the Department of War, and on the 17th of September, 1841, it was directed to be paid by *Albert M. Lea*, Acting Secretary of War, as he says, under the direction of the President! Mr. John Bell having retired from the office some days previous, I think on the 10th of the same month.

We intend to insist on the refunding of the amonnt thus illegally allowed and paid, by those who received it in the final adjustment of their claims against the United States. This will, as we have shown, restore to the treasury upwards of *a million of dollars*, and if it shall now be decided that Mr. Ross and his eastern Cherokees did not obtain any title to the country they now occupy by the treaty of 1835, as their counsel has admitted, by declaring that "*the lands obtained west of the Mississippi, formed no part of the consideration given for the country east, under the provisions of that treaty*;" this sum can be applied toward the payment of the "western Cherokees" for that country.

The payment to John Ross, in September, 1841, by direction of President Tyler, I believe furnished the only instance on record of one executive reviewing and setting aside a decision solemnly made and recorded by a predecessor. And I have good authority for saying that President Tyler would not have done so in this case had he been fully apprized of its situation. Attorney General *Wirt*, in giving his opinion to the President upon the authority of one executive to review and unsettle an act of his predecessor, says: "If it has had such authority, the executive which is to follow us must have the like authority to review and unsettle our decisions, and set up again those of our predecessors; and upon this principle, no question can be considered as finally settled." [See vol. Attorney General's Opinions, page 554.] A similar opinion is given by Attorney General *Taney*, on 10th September, 1831, in reply to the Secretary of War. [Same vol., 841.]

In closing these remarks, I respectfully refer the honorable commissioners to the provision of the 12th article of the treaty of 1835, whereby a special committee is selected by the Cherokee na-

tion, "*fully empowered and outhorized to transact all business on the part of the Indians, which may arise in carrying into effect the provisions of this treaty, and settling the same with the United States.*" This committee organized in the year 1836, and is still legally in existence. If, then, Mr. Ross now acknowledges the treaty of 1835, and demands a faithful execution of its provisions, the 12th article settles the question of who shall possess *authority*, on behalf of the Cherokees, to arrange the matters with the United States. The *Cherokee government* has no power, in this respect, conferred by the treaty of 1835. The *faithful execution of the treaty of* 1833, belongs alone to the government of the United States, and the western Cherokees, now called "old settlers." The present *Cherokee government* is, therefore, released from all obligation or trouble in settling any business with the United States, under existing treaties, by the stipulation of these treaties themselves.

F.

Memorandum for commissioners.—Submitted with final proposition.

In submitting the propositions of the old settlers, in a distinct and separate form, before the honorable board of commissioners, we respectfully insist that the following point has been clearly established, to wit:

The people known as the "*Cherokee nation west of the Mississippi river*," under the provisions of the treaty of 1833, constitute the full ONE-THIRD of the *old Cherokee nation*, as it existed *anterior* to the treaty of 1817, and must be so considered in the adjustment of their claims, should they be brought in connexion with any other party in the nation, in that final settlement.

Upon this point, the authorities we have cited before the board establish the following facts:

1. That the *emigrants*, who are called by the treaty of 1817, the "Cherokees on the Arkansas," entered into a stipulation with that portion of the nation called the "Upper Towns," (and who had previously determined to *retain* their share of the country east,) that the *final division of their country and their annuities* should be determined by a census, to be taken in the month of June, 1818; that the Arkansas Cherokees agree to cede the portion of country thus allotted to them *to the United States, in exchange for lands west of the Mississippi*, the eastern and side lines of which country are described; leaving the *western* boundary unsettled until it can be fixed by the census. Upon this agreement, a large cession is then made by the whole nation to the United States; in payment of which, a country is secured to the Arkansas Cherokees, as above stated, which is to be extended so as to be in size equal to that *then* relinquished, or which might *thereafter* be relinquished by these people, in the *east*. For this position, we refer to the treaty

of 1817, page 209, volume of Indian treaties. (See caption and preamble, and articles 1, 2, 3, 4 and 5, of this treaty.)

2. The treaty of 1819, made between the United States and "Upper Towns," or eastern Cherokees, settles the question of the *division of the nation* as follows: that the Cherokees who have separated from the old nation, and who have removed and intend to remove west of the Mississippi, and have there organized a nation, shall be hereafter taken and considered as the ONE-THIRD *of the whole nation!* that they are entitled to *one-third* of the country east, and *one-third* of the annuities due the whole nation, in accordance with the stipulations of the 3d and 4th articles of the treaty of 1817. This arrangement, for the *final division of the common property of the Cherokee nation*, which it owned *anterior* to the treaty of 1817, was entered into and agreed upon between the United States and the *eastern Cherokees*, without the *western Cherokees* having any voice in making the bargain. It was estimated by these two parties that the Cherokees already on the Arkansas, and those enrolled for removal, and who intended to remove, constituted the *one-third of the whole Cherokee nation.* The taking of the census, provided for by the treaty of 1817, to which the *Arkansas Cherokees were a party*, was here dispensed with, so anxious were the *eastern Cherokees* to close the door against a further or more extensive sale of their lands, which might have been produced by further delay in taking that census. They, therefore, at once agreed to consider the *Arkansas Cherokees* as constituting *one-third* of the old nation, and that all the property held in *common* by the nation heretofore, should now be divided accordingly. Thus *one-third* of this property, consisting of *lands* and *annuity*, was allotto the *western*, and *two-thirds* to the *eastern Cherokees!*

It was stipulated that this arrangement should not be binding on the western Cherokees unless consented to by them. They formally gave their assent to it, and the treaty of 1819 became part of the supreme law of the land in all its provisions. For these positions, see the treaty of 1819, its preamble, and 1st, 4th and 6th articles, page 265, *et seq.* It will be here found that a cession of a large tract of country was made by the first article, which, taken in connexion with the cession of 1817, estimated at near four millions of acres, (at least 3,500,000 acres,) was estimated at *one third of the whole country*, to which the Arkansas Cherokees were entitled, and for which they had bargained with the United States to take lands in payment, west of the Mississippi, *acre for acre.*

3. The *prospective* emigration contemplated by the treaty of 1817, under which the whole nation might have emigrated and obtained lands in the west in proportion to the quantity surrendered in the east, was thus summarily arrested by the treaty of 1819. By the continuance of the *emigration provision* of the treaty of 1817 the whole Cherokee country east of the Mississippi might have been extinguished, (then estimated to contain upwards of twelve millions of acres;) for which, *in full payment*, they would have received a country west of the Mississippi of equal extent, *acre* for *acre.*

After the stipulation in the treaty of 1819, providing for a permanent division of the nation, and all the lands and annuities of the nation, between the two parties, was assented to by the western Cherokees, all parties were bound by that stipulation. If, under this stipulation, it had been afterwards ascertained that *two-thirds* of the old nation had removed west and become a constituent part of the western nation, they only would have been entitled to *one-third* of the old country, for which they had taken lands in Arkansas, *acre for acre*, afterwards ascertained, by actual survey, to amount to upwards of *four millions six hundred thousand acres* —leaving the *two-thirds* of the country reserved in the east to the exclusive ownership of the *one-third* of the nation who remained in possession of it!! And, upon the same principle, if only *one-tenth* of the whole Cherokee tribe would have afterwards been found settled upon and in possession of the country west, under the provisions of the treaty of 1819, they were still entitled to the *exclusive ownership of the country thus obtained in exchange, under these provisions*, and *to one third of the whole annuities*. Upon this principle the treaty was executed by the United States, until changed by the operation of the treaty of 1835.

The eastern Cherokees, as shown by the treaty of 1819, represented the western Cherokees as constituting *one-third* of the whole nation, and declared that they were the owners of *one-third* of the whole country east of the Mississippi! The United States recognized this division, and thus obtained the *one-third* of that valuable country! Can this government now, after having used the western Cherokees as the *one-third* of the whole nation, for the purpose of acquiring this large extension of territory for the use of the States, refuse now to acknowledge these same people as constituting the *one-third of the whole Cherokee nation?* Their numbers, it is acknowledged, have been much diminished since that time, which has been produced by various causes, such as fever, and other diseases incident to the settlement of a new country; numerous wars, in which the first settlers were involved, with the Osages, and other wild tribes; and various causes produced by the removal of the eastern nation in the year 1839. But an Indian tribe must be considered as a *family*, all the members being minors, claiming equal rights in an undivided estate. If this family is reduced to one-tenth, or one-fiftieth of its original numbers, the survivors are still heirs to the whole estate. The western Cherokees, who obtained a cession of the country under the treaty of 1833, (their last treaty,) owned that country *in common;* and if only fifty survivors can now be found, they are entitled to all the rights conveyed to the original number.

4. The treaty of 1828 is a contract between the United States and the "Cherokee nation west of the Mississippi," exclusively. The United States desired to obtain the lands within the limits of Arkansas, which had been conveyed to that nation in exchange for the *one-third* of the country east, ceded to it by the treaties of 1817–'19, and, in exchange for these lands, they offered a country still further west. After a tedious negotiation, commencing about

the beginning of February, 1828, a treaty was concluded on the 6th of May following. By this treaty the "western Cherokees" relinquished the Arkansas country to the United States and obtained, in exchange, another country, described by metes and bounds, and estimated to contain *seven millions of acres*, with a perpetual outlet west. The eastern Cherokees, not being parties to it, *ceded none of their lands under its provisions*. By this treaty the *progressive* emigration, contemplated by the treaty of 1817, was *recommenced*, but without the assent of the eastern Cherokees. The condition in the treaty of 1817, however, was omitted in the treaty of 1828, (because it could not have been binding if inserted,) "*that lands in the east should be surrendered to the United States in proportion to the quantity relinquished by the emigrants, to which, in proportion to their numbers, they were entitled.*"

Emigration recommenced under the 8th article of the treaty of 1828, and then the important question arose, "whether the lands and improvements, left by the emigrants in the eastern country, became the property of the United States for the use of the State of Georgia, or continued to be the property of the nation still holding possession of the eastern country under the treaty of 1819." This question, as has been shown, was submitted to the Hon. Wm. Wirt, as counsel for the eastern Cherokees, whose opinion and argument is before the board. It has also been shown that delegations from the eastern and western Cherokee nations appeared in Washington in 1832 and 1833. The western Cherokees protested against a further emigration under the treaty of 1828, unless *an addition would be made to their country*, and to their annuities, as stipulated by the treaty of 1817, in proportion to the numbers who had emigrated since the treaty of 1828. The eastern delegation protested against the adoption of this proposition—declared that their rights could not be impaired, or any portion of their country taken from them by the operation of a treaty to which *they were not a party;* hence they claimed, that all the lands and improvements relinquished by any of their people who chose to join the western nation, should be and remain the property of the remaining eastern nation. In June, 1833, (I think the 22d,) the government of the United States settled this question by terminating all emigration under the provisions of the treaty of 1828; and that line of division between the two nations is embraced in the 15th article of the treaty of 1835. [For the proceedings of the Cherokees, east and east, in relation to the effect of the treaty of 1828 upon the interests of both nations; and, also, for proof that *anterior* to the treaty of 1835 the government of the United States had in view the purchase of a new country west for the eastern Cherokees, (see the correspondence published in Senate document, 1st session 23d Congress, 3d volume, No. 512,) which is in possession of the board. There is one letter in that volume not referred to in my argument. It will be found at page 548. The attempt to have a provision introduced into the Cherokee treaty under which the eastern Cherokees could be permitted to come into the country, indicated in this letter, was frequently made in my presence; but

the proposition would not be listened to. The letter is from the Acting Commissioner of Indian Affairs to the commissioners then at Fort Gibson, and it is worth looking at, as an important link in our chain of evidence.

5. The treaty of 1833 is also a treaty solely between the United States and western Cherokees. The eastern nation is not mentioned; it neither cedes nor purchases lands. Look at the 4th article of the treaty, concluded between the same commissioners and the Creek Indians on the same day—February 14, 1833. It is therein provided that the country secured to the Creek Indians shall be considered the property of the whole Creek nation, on the east and west of the Mississippi. This last treaty with the western Cherokees was ratified on the 12th day of April, 1834. Although, as you have seen, an attempt was made to alter the treaty so as to revive the stipulations of the treaty of 1817, or the *invitation* contained in the treaty of 1828; yet it was ratified by the President and Senate of the United States without such amendment, *and confirmed the title to the country west of the Mississippi in the western Cherokees, as a separate and independent nation from the eastern Cherokees.*

6. Now, we assume this position as clearly established, viz: The *one-third* of the Cherokee country east of the Mississippi river, as it existed anterior to the treaty of 1817, is now, in 1834, (at the ratification of the Cherokee treaty of February, 1833,) embraced within the provisions of the last mentioned treaty, and, by the various exchanges, the western Cherokees have obtained *seven millions of acres*, with an outlet in the west for their share of the eastern country, relinquished as above stated. In other words, the share of the country east allotted to the western Cherokees by the division made under the treaties of 1817 and 1819, is transferred to the west, and confirmed to them by this treaty of 1833.

7. The "western Cherokee nation," then, claim to be the owners of this country, possessing the exclusive right to dispose of it; and who are the western Cherokees, and how are their numbers to be ascertained? Very easily. They are those who emigrated under the provisions of the treaties of 1817, 1819, and 1828, who became entitled to and received the *one-third* of all the property held in common by the whole Cherokee nation at the time the treaty of 1817 was concluded. The records of the War Department will show that emigration under all these treaties, *ceased in June* 1833! All the Cherokees, therefore, who enrolled for emigration *prior* to that time, are considered as belonging to the old "Cherokee nation west of the Mississippi river," and also such others, who emigrated subsequent to that time, as were adopted by the western Cherokees.

8. Now comes the treaty of 1835, negotiated with the eastern Cherokees. Notwithstanding the violent and continued protests of the eastern Cherokees, from the year 1819 up to this period, against *all connexion with the western Cherokees*, declaring that they held *no property in common since the partition made by the treaty of* 1819, *and that their rights could not be interfered with*

by the treaty of 1828, *to which they were not a party!* Notwithstanding the whole correspondence between the United States and the eastern Cherokees, for several years immediately *preceding the treaty of December* 1835, shows that a country must be *purchased* for them in the west; yet that treaty is made to contain a provision designating *the country of the western Cherokees* (secured by the treaties of 1828 and 1833) as being the property also of the *eastern Cherokees!!!*

What was the condition of the *two-third* and *one-third* nations of Cherokees on the day this treaty of 1835 was ratified by the Senate of the United States, which was on the 23d day of May, 1836? Why, the *one-third* nation had exchanged all the country it possessed east of the Mississippi, in a fair bargain with the United States, for a country west of the Mississippi, then in its possession! It received no *money* for its share of the estate east of the Mississippi, but was paid entirely in *lands* west. By the first bargain, these lands were given *acre* for *acre;* and by the last, inferior *quality* was made up by *quantity!* The *two-third* nation is then asked to dispose of its country east, and the *full value in money* is assessed by the Senate of the United States, *without reference to any other consideration! Five millions of dollars* is given for the Cherokee lands east of the Mississippi, (*being the two-thirds of the country reserved by the treaty of* 1819,) and then this *two-third nation assumes the ownership in common with the one-third nation west of the Mississippi,* of the country purchased and paid for exclusively *with its share of the country east of the Mississippi!!!* Can this be so? Yes; and the United States does not object to the assumption, but suffers it to be incorporated in the treaty! The *eastern Cherokees*, therefore, get paid in money for their *two-thirds* of the country belonging to the whole nation, when the final division was made by the treaties of 1817 and 1819, and then assume to hold a proportionate interest in the country west obtained by the western Cherokees for their *one-third!* By the same act the western nation is excluded from all participation or ownership in the two-thirds retained by the eastern nation! [*See the provision of the* 15*th article treaty of* 1835.]

9th. In conclusion. Suppose that in December, 1835, on the day the treaty of that month was concluded, *every Cherokee* left in possession and ownership of the country east, by the treaty of 1819, *had been found in the country west of the Mississippi, under the emigration produced by the treaty of* 1828, and the country east *entirely abandoned*, would their title to that country have been extinguished by that process? If it would not, then who of the Cherokees, thus thrown into the country west, could have claimed the *eastern lands?* Why, the *whole united nation*, most assuredly. Again, suppose that in December, 1835, every Cherokee had removed west, under the construction attempted to be put upon the treaty of 1828, with the exception of, say Mr. John Ross and his council, *twelve persons* altogether, would not these twelve persons, *according to the terms of the treaty of* 1835, (being then in possession,) have been entitled to the full value paid for that country?

Certainly. And *the whole balance of the Cherokee nation*, as reunited by the treaty of 1828, *could only claim the country west, which had been originally given for the one-third of the whole country east!!* If, on the other hand, on the 29th day of December, 1835, the *treaty of* 1817 *was still in operation*, (as has been argued,) and the eastern Cherokees were to go west under its provisions, then *the lands east* should have been *exchanged for lands west, acre for acre!* and not sold for money!!! Hence, the *two thirds of the old country, amounting to upwards of eight millions of acres, must have* been added to the *one-third* obtained in *exchange by the western Cherokees!* with such additional quantity as might make the western lands of *equal value* to those relinquished in the east! in accordance with the provisions of the act of Congress, approved May 28, 1830, entitled "*An act to provide for an exchange of lands with the Indians residing in any of the States or Territories, and for their removal west of the Mississippi river.*" [8th volume Laws, pages 342 and 343]

Submitted July 22, 1846.

J. C. S.

G.

Claims of the Old Settlers.

Having, as we trust, satisfied the board of commissioners that the Cherokee country west, as defined by the treaty of 1833, was and continues to be the exclusive property of the "old settlers," together with one-third of the old annuities assigned them by the treaty of 1819, they consider *the exclusive possession* of that country and *the restoration of that annuity*, together with all the benefits stipulated for in the former treaty, as their unquestionable rights.

In the spirit of accommodation, however, which has ever actuated them, they are willing to accept an equivalent for those rights, if it shall be more agreeable or more convenient to the United States.

Accordingly, they offer *to sell the whole Cherokee country west*, as defined and guaranteed to them by the treaty of 1833, to the United States for a fair consideration in money, to be disposed of for their benefit, under the guardianship of the government.

As a criterion to ascertain and fix the value of their lands, they present the following examples, viz:

1. The price paid the Cherokees east per acre for their country under the treaty of 1835.

2. The price per acre charged the eastern Cherokees for the 800,000 acres sold them by the treaty of 1835, adjacent to the country of the western Cherokees, though of inferior quality. Surely there can be no *fairer* criterion than the price which the United States have themselves both *paid* and *charged*.

3. But if this be not acceptable, the "old settlers" will take the

same price per acre that has been, directly and indirectly, in lands and money, allowed to the Chickasaws.

4. Or to the Choctaws.

5. Or to the Creeks.

6. Or the price per acre given by the Chickasaws to the Choctaws for a country to live in within the Chickasaw country west.

In a sale upon the basis of either of these transactions the "old settlers" will charge nothing for their outlet west, embracing over six millions of acres, and will surrender all claim to a restoration of their old annuities.

If it be assumed that the western Cherokee lands were the common property of the whole Cherokee nation, the case will then stand thus:

The United States took from the western Cherokees their portion of the Cherokee lands east, *paying nothing therefor*, and sent them upon the common property in the west.

They took from the eastern Cherokees *their* portion of the Cherokee lands east, *paying five millions of dollars therefor*, and sent *them* also upon the common property in the west.

If this ground be taken, the "old settlers" claim, as a matter of justice, that they also shall be paid for the third part of the country east surrendered by them the same price, in proportion, which has been paid the eastern Cherokees for their two-thirds, with a restoration of their old annuities or a commutation therefor.

And as the United States have furnished the eastern Cherokees a new country for *nothing*, it is but fair that they should furnish the western Cherokees a new country *for nothing*—said country to be equal in value to the one-third of the Cherokee country east surrendered by them under the treaties of 1817 and 1819.

The "old settlers" claim nothing which does not of right belong to them; and, therefore, they claim no part of the *per capita* money arising out of the treaty of 1835.

But they propose that a *per capita* allowance shall be made to their people, out of the purchase money of their own country, equal to that which may be found due to the eastern Cherokees, that all the common Indians may feel that they have been treated alike.

As to their political position, the "old settlers" would prefer an entire separation from the Ross party, and believe they can live in harmony with the treaty party.

But if such a separation cannot be had, they ask, and think they have a right to claim, *the most effective measures for their protection*. Every man among them who has asked a division of their country, or proposed to sell it, or any part of it, is a traitor, not only liable to be tried and hanged under the code of laws to which they have been subjected, but to be shot down by the armed police.

They, therefore, ask that a district of country may be assigned to them, (that in which they now principally reside,) into which they may retire and live by themselves—that district to constitute one of the political divisions of the nation.

That a full amnesty may be granted for all crimes committed on

either side, connected with the party divisions or the conflicting claims of the several parties in the Cherokee country.

That the armed police be disbanded, and the maintenance of any armed body of men in the country forever prohibited.

That the "old settlers" shall have a representation in the committee and council, proportioned to their numbers; that they shall elect their own sheriff; that one judge of the supreme court, all the judges of their district, and all other officers thereof, shall be appointed from nominees to be presented by them in some eligible mode.

That provision shall be made to indemnify all those whose property has been destroyed by the armed mobs or police, tolerated by the Cherokee government, since the first day of November last, or lost in consequence of the flight of its owners from just apprehensions for their personal safety.

That full indemnity shall be made for all salines which have been unlawfully taken from them by the present Cherokee government, and all damages sustained by their owners in other property and interests caused by such seizure. A list of these claims will be submitted.

That the criminal laws of the United States shall be extended over the Cherokee country.

Or, if that *essential measure of protection* shall not be granted, then that provision may be made to pay for the improvements of such "old settlers" as may not think their lives safe within the Cherokee country, that they may secure safe and comfortable homes among strangers.

If the old settlers are to be compelled still to form a part of the Cherokee nation, as now constituted, they propose not to disturb the existing funds of the nation as now arranged, leaving their old annuities to form a part thereof; but they earnestly desire that the sum to be paid them for their country may not be exposed to the waste which has consumed that allowed as the purchase money of the Cherokee country east.

To that end they propose that, after paying therefrom the per capita money already alluded to, the debts for which they are morally bound in their aggregate capacity, and the claims of counsel according to agreement, the balance may be invested under the control and guarantee of the United States, and the proceeds applied under the same authority, within their district, as rewards for advancement in the arts of civilized life:

To the man who will enclose and faithfully cultivate the largest tract of land.

To the woman who will make the most and best cloth, and keep the neatest house.

To the parents who will best clothe their children, and send them school.

To children who shall excel in any branch of knowledge, and to the education of such as may be particularly distinguished for talents, sobriety, and industry, in the best colleges of the United States.

To mechanics who excel in their several trades; the carpenter who builds the best house; the cabinet-maker who turns out the best furniture; the wheelwright who makes the best wagon; the best blacksmith, stone mason, bricklayer, shoemaker, and so to the whole round of trades.

In fine, it is the wish of the old settlers that their funds, instead of being applied to encourage vice and extravagance in the purchase of liquors or goods, shall be used for the purpose of elevating their whole people, as quick as possible, to the level of their white brothers.

It is also claimed by the old settlers, that provision be made to discharge all just claims of their people against the United States, arising out of the treaty of 1828, which have not been paid.

Also, that the members of the several delegations of their people who have come to Washington to prosecute their claims since 1840, shall be placed on the same footing, as to expenses and amount of compensation, as the delegation of the Ross party have been.

Also, indemnity to the family of the late Captain John Rogers, for losses of property incurred by him on account of his exile from his country, in consequence of seeking redress for his people in violation of the laws of the Ross party, and his personal expenses incurred in calling meetings of his people and attending to their affairs.

The foregoing points are submitted as indicating the principles on which the old settlers are willing to adjust their claims against the United States, in general terms, for the information of the commissioners, subject, however, to future modification.

S. C. STAMBAUGH,
AMOS KENDALL,
On behalf of the western Cherokees.

JULY 22, 1846.

H.

To his Excellency the President of the United States, respectfully submitted by the "western Cherokee delegation:"

The Cherokees, heretofore known as the "Cherokee nation west of the Mississippi river," agree to submit their claims, arising out of treaty stipulations, to a board of commissioners to be appointed by the President and Senate of the United States. That the grounds upon which these claims are based may be fully understood by the appointing power, and by the other delegations of Cherokees now at the seat of government, the undersigned assume that the following facts and positions are incontrovertibly established by the published records of the country.

1st. In the year 1808, the Cherokee tribe of Indians, being already divided into two parts, called "upper" and "lower towns," agreed to make arrangements to effect a *final separation*, and both

parties sent delegations to Washington, for the purpose of procuring the permission and assistance of the President of the United States to enable them to accomplish that object. The deputies from the upper town made known their desire to remain permanently in the country they then occupied, have the boundary lines between their lands and those of the States clearly and definitely established, so that they might with safety "engage in the pursuits of agriculture and civilized life," and also establish a division line between them and the lower town, in order that by "contracting their society within narrow limits," they might commence "the establishment of fixed laws and a regular government." The lower town expressed their desire to accept of this division of their common country, and that they would then *exchange their share for a country west of the Mississippi river.*

2d. On the 9th day of January, 1809, President Jefferson replied to the propositions of both towns, commencing his talk in the following paternal language: "The United States, my children, are the friends of both parties, and, as far as can be reasonably asked, they are willing to satisfy the wishes of both." He then tells those who wish to remove west, that they "are permitted to send an exploring party to reconnoitre the country on the waters of Arkansas and White rivers," &c. And he further says: "When this party shall have found a tract of country suiting the emigrants, and not *claimed by other Indians*, we will arrange with *them* and *you* [meaning the emigrating and anti-emigrating parties] the *exchange* of that for a just portion of the country *they* leave, and to a part of which, *proportioned to their numbers*, they have a right." Here, then, the "*Cherokee nation west of the Mississippi*" had its origin; and the division of the *tribe* and *country* east of the Mississippi was officially sanctioned by the President of the United States.

3d. The exploring party, thus authorized by the President, started in search of a new home early in the ensuing season, and on the western shore of the Mississippi they were joined by several bands of their brethren who had left their eastern homes many years before. They explored the country between the Arkansas and White rivers, and found a tract of land adapted to their wants, upon which they immediately commenced their settlements. From that period up to the year 1817, emigration gradually proceeded from the east to the west, and the western Cherokees assumed a *national character*, recognized the United States, who kept an agent among them; but they had no fixed boundaries to the lands they occupied.

4th. In the year 1817, the western Cherokees notified the President of the United States of their then condition, and of their "anxious desire for the full and complete ratification of his promise," made in the year 1809. The President then notified them that he would appoint commissioners to meet a delegation from their people, and a delegation from the eastern nation. Accordingly, these commissioners, and the two Cherokee delegations, met at the Cherokee agency, east of the Mississippi, and on the 8th day of July, 1817, a

treaty was concluded between the several parties. This treaty is signed by General Andrew Jackson, Governor Joseph M. McMinn, and General Meriweather, commissioners on behalf of the United States—by *thirty-one* delegates on behalf of the "Cherokee nation east," and *fifteen* delegates from the Cherokee nation west." In the caption of this treaty, the western Cherokees are designated as follows: "chiefs, head men and warriors of the Cherokees on the Arkansas river, and their deputies, John D. Chisholm and James Rodgers, duly authorized by the "*chiefs of the Cherokees on the Arkansas river*," *&c.* In the signing of the treaty, as published, the words "*Arkansas chiefs*" head the signatures. This is the last treaty to which the eastern and western Cherokees are parties; since that time two treaties were made between the United States and the *eastern Cherokees*, and the same number between the United States and the *western Cherokees*. The substance and language of all these treaties shew them to be *separate* and *independent nations*.

5th. The foundation of the claims of the western Cherokees, to the exclusive ownership of the country west of the Mississippi, was laid by the treaty of 1817. In the third paragraph of the preamble of that instrument, the United States commissioners, in speaking of the authority of the western Cherokees to enter into a *treaty* for the exchange of lands, declare that "*as notified by the President of the United States, they have sent on their agents with full powers to execute a treaty, relinquishing to the United States all lands, of right to them belonging, as part of the Cherokee nation, which they have left, and which they are about to leave, proportioned to their numbers, including, with those now on the Arkansas, those who are about to remove thither, and to a portion of which they have an equal right, agreeably to their numbers.*" The next paragraph of the preamble, which introduces the articles of the treaty, reads as follows:—"Now, know ye, that the contracting parties, to carry into full effect the before recited promises with *good faith*, and to promote a continuation of friendship with their *brothers on the Arkansas* river; and for that purpose to make an EQUAL DISTRIBUTION OF THE ANNUITIES *secured to be paid by the United States to the whole Cherokee nation*, have agreed and concluded on the following articles, &c." By the first and second articles, the whole Cherokee nation then cede and relinquish to the United States, a large territory supposed to be the portion which would fall to the share of the Arkansas emigrants. The 3d article then *limits the time allotted to the Cherokees to make up their minds as to which nation they would join, and the month of June*, 1818, *was fixed upon as the latest period for taking the census to accomplish that object.* The 4th article provides for the division of the annuities, *at that time due the nation*, on account of previous cessions of lands between the two parties, which then amounted to ten thousand dollars; and that this division be made in conformity to the provisions of the 3d article, after the census was completed, and be continued thereafter in proportion to the numbers of the two nations. The 5th article makes the cession to the western

Cherokess of lands in Arkansas, in exchange for the lands ceded to the United States by the first and second articles, making this solemn promise at the commencement of said article: "*The United States bind themselves*, in EXCHANGE *for the lands ceded by the first and second articles hereof, to give to that part of the Cherokee nation on the Arkansas as much land on said river and White river as they have, or may hereafter receive from the Cherokee nation, east of the Mississippi*, ACRE *for* ACRE, *as the* JUST PROPORTION DUE THAT PORTION OF THE NATION *on the Arkansas, agreeably to their numbers*," &c. (See vol. of Indian Treaties, page 209, *et seq.*)

6th. In the year 1819, a treaty was concluded between the United States and *eastern* Cherokees, at the instance of the latter, for the purpose of terminating the *progressive emigration west*, and EXCHANGE OF LANDS provided for by the treaty of 1817. The census, which was to have been taken in June, 1818, had been postponed by the United States, and the Cherokees *east* determined to close the door of emigration, and arrest the consequent *diminution of* THEIR *country*, and *increase of the country* WEST. The honorable J. C. Calhoun, Secretary of War, entered into this treaty with the eastern Cherokees, on the 27th February, 1819. With the brevity and clearness characteristic of that great man, the preamble to the treaty is made to explain, fully, the object which produced it. The taking of the census *was dispensed with*, and a large tract of country was ceded to the United States, in *addition* to the cession of 1817, which was to be *taken in full for all already given or thereafter to be given to the Arkansas Cherokees in exchange for their portion of the country east.* The first article cedes the land, and makes the agreement that it shall be taken *in full for all claims the United States can have on the Cherokees on account of the cession by the United States west of the Mississippi river.* This closes the door left open to a further and *progressive* emigration and *exchange* of *lands* by the treaty of 1817. The 6th article then stipulates for a fair division of the annuities (then due the whole Cherokee nation) *between the tribe as divided.* Their annuity at that time amounted to $10,000, which was the annual interest on the whole sum they had been paid for the vast extent of country ceded to the United States, from the period of the establishment of their boundary lines by the treaty of Hopewell, in 1785. They received no additional annuities for the *extensive cession of* 1817 *and* 1819; these were merely *an exchange of lands*, ACRE for ACRE —lands in the heart of civilization; fertile and rich in soil and minerals, exchanged for an equal quantity in the wilderness of the far west !! The annuity of $10,000, however, is divided by the 6th article, and *two-thirds* allotted to the eastern, and *one-third* to the western Cherokees, as it was then, in the language of that article, "*estimated that those who have emigrated, and who have enrolled for emigration, constitute* ONE-THIRD *of the whole nation !*" This *division of the tribe* was settled between the United States and *eastern Cherokees.* The western Cherokees had nothing to do with it until the proposition was afterwards referred to them, as provided by the treaty for their approval or rejection, when they ac-

ceded to it, and it became *binding upon all parties*. That division still constitutionally and legally exists. If one thousand, or one hundred Cherokees only, had removed west, the *terms of the separation* could not be changed. The eastern Cherokees had effected their great object; that was to get rid of that portion of their people who determined to *remove west*; and thus put a stop to a further cession of their lands, by making a settlement in full, on that account, with the emigrants. The United States in part accomplished their great object, which was to procure the lands, and get rid of the Indian population in the several States. The treaty of 1817 was intended to effect that object; but its progress was arrested by the treaty of 1819, which placed an effectual barrier between the eastern and western Cherokees by making them distinct and separate communities, holding no interest in common. (*For treaty of* 1819, *see treaty book, page* 265, *et seq.*)

7th. In the year 1828, the first treaty was entered into between the United States and western Cherokees, as a separate and independent nation. Early in February, 1828, a delegation from the western nation arrived in Washington, under sanction of the United States government. It was headed by "Black Fox," the principal chief. The Secretary of War, Governor Barbour, immediately held a council with this delegation, and proposed a treaty for a re-cession to the United States of the country occupied for farming purposes by the western Cherokees, under the treaties of 1817 and 1819, and which had been surveyed and a *fee simple* title promised by the United States. Black Fox boldly told the Secretary that he "*did not come to make a new treaty, but to procure a proper execution of those already existing.*" He said his "nation had sent the delegation to have the boundary lines promised by the treaty of 1817, and often afterwards by their great father, the President, plainly marked, that they might be clearly understood, and that the white people must be removed from their country thus secured to them." The Secretary of War exercised all his power and influence to procure a new treaty, which would place the Cherokees further west, and beyond the possibility of being surrounded by a white population. He depicted to the delegation the unfortunate and unhappy condition of the nation yet remaining in the States, in the midst of a white population, and oppressed by the operation of the State laws enacted over them. Congress was then in session, and the Georgia delegation in that honorable body stimulated the Secretary to increased and unceasing exertions to procure a treaty which should renew the inducements held out by the treaty of 1817, and make them stronger for the purpose of procuring *emigration*, which would free that State, at least, from her Cherokee population. At length, after a tedious negotiation, a treaty was concluded on the 6th day of May, 1828, between the Secretary of War and the Cherokee delegation. In the caption of this treaty, this delegation is called "*chiefs and headmen of the Cherokee nation of Indians, west of the Mississippi, they being duly authorized and empowered by* THEIR NATION." The preamble of this treaty speaks for itself, the Cherokee party relinquish no rights

secured to them as a SEPARATE NATION by previous treaties. There was no representative present from the *eastern nation*, and no interest was claimed by that nation in the country of the *western Cherokees!* By this treaty a new country is designated for the western Cherokees, for which they are made to *exchange* the country then in their occupancy, but, in reality, the country thus obtained in exchange was part of their own lands secured to them as an outlet by solemn treaty promises! The first article fixes the eastern line of their *new* country, and the second defines its entire boundary. The sixth article contains a provision which ought to put to rest forever the question of title to the country conveyed to the western Cherokees by the treaty of 1828. It reads as follows: "When they (the Cherokees) may wish to lay off their lands, and own them INDIVIDUALLY, a surveyor shall be sent to make the surveys at the cost of the United States." This treaty was ratified on the 28th day of May, 1828, and on that day the Cherokees in the actual occupancy of the country west might have demanded a partition of the whole seven million acres of land, and held them individually under a *fee simple* title! No one will question this assertion. But it is not the intention of the undersigned to argue upon any point now, but simply to state the facts as they appear from the public records, upon which they base the claim of the "old settlers." It is well known that the eastern Cherokees protested violently against emigration from the east, under the conditions of the treaty of 1828, as interpreted by the contracting parties to that instrument. The United States claimed for the use of the States the land to which each emigrant was entitled east, who removed under these conditions! and the Cherokees west demanded that an *equal quantity of land* must be added to their country, to that relinquished by emigrants under the same conditions, in accordance with the provisions of the treaty of 1817!! and also that their *one-third* of the old annuity must be proportionably increased under the same provisions. All this was combatted by the eastern Cherokees, who employed able counsel to show that a "*treaty made with the* WESTERN CHEROKEE NATION *could not affect the interests of the* EASTERN NATION, *no more than could a treaty made with the latter affect the interests of the former!!*" And thus was the question settled, and the government of the United States, itself, put an end to all emigration under the provisions of the treaty of 1828, in the month of June, 1833.

8th. On the 14th February, 1833, another and the last treaty was made between the United States and "western Cherokee nation." These people were then in their new country, with a regular form of government established by themselves. A difficulty had arisen between them and the Creek nation concerning their boundary lines, as established by former treaties; and this last treaty was made for the purpose of permanently settling that question. The Creek delegation met in council with the Cherokees on the 29th January, 1833, and it was not until the 14th of February that they agreed upon their boundaries, which will be found in the treaties concluded with both nations on that day. The country of the western

Cherokees is described in the first article of their treaty, which guaranties the title in *fee simple*, and closes as follows: "*And letters patent shall be issued by the United States, as soon as practicable, for the lands hereby guarantied.*" This treaty was signed by the western Cherokees, in their NATIONAL CAPACITY—by the principal and two assistant chiefs, and by the presidents of the national committee and council. It has never been abrogated, altered, or amended by the parties who made it, and on the 29th day of December, 1835, the date of the last treaty between the United States and eastern Cherokees, *the country west of the Mississippi, containing seven millions of acres, with a perpetual outlet west of the same to the western limits of the United States, was the exclusive property of the western Cherokee nation!!*

9th. By the treaties of 1828 and 1833 the title of *occupancy*, recognized by this government as being in Indian tribes, is changed to a *fee simple* title. The Cherokees were not the aboriginal owners of the country west—they obtained that country from the United States, and paid full value for it! No other treaty in the book conveys a similar title to an Indian nation with that made to the Cherokees by the treaty of 1833!!

10th. If it is assumed that the relations before existing between the United States and the Indian party to that compact were not changed by it, and the *Indian title* only still exists, then how is that title to be extinguished? The law of 1802, which will be found in the 12th section of the law of 1834, the only law extant upon the subject, enacts as follows: "That no purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any tribe or nation of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention, entered into *pursuant to the constitution*. [2d clause of 2d article of the constitution.] Has the title of the western Cherokees to their lands, confirmed by the treaty of 1833, been extinguished in accordance with the above requirement of law? Have they sold, granted, or leased their lands by treaty or convention, which has been ratified by the President and Senate of the United States in the constitutional form? No, never. The public record can exhibit no such treaty or convention.

11th. How, then, was the western Cherokee nation dispossessed of their country and their government? Why, by the operation of a treaty concluded in December, 1835, between the United States and a portion of the Cherokee nation *east of the Mississippi*, in opposition to the protest of a large majority. The United States purchased from the minority of the *eastern nation* all the lands of the eastern Cherokees for the sum of five millions of dollars, the *full estimated value of those lands*, and gave them into the bargain the *country of the western Cherokees*, obtained by these people *in exchange for their portion of the country ceded to the United States by the treaties of* 1817 *and* 1819!!

12th. By the treaties of 1817 and 1819 about four millions of acres, estimated at *one-third* of the whole Cherokee country east of the Mississippi, was portioned off to that part of the nation who de-

sired to separate from the parent tribe and establish a nation west of the Misssisippi! At that time this was considered a good arrangement by all parties. The *western party* then ceded their share of the common property, thus divided, to the United States, and received in payment, not MONEY, but LANDS in the western territory of the United States. The same contract also gave them an annuity of $3,333 33⅓, which was the *one-third* of the annuity due the old nation, for lands ceded anterior to the treaty of 1817. This is the whole amount of annuity ever paid to the western Cherokees, and all they were entitled to under existing treaty stipulations. *Their country in the east had been transferred to the west, with this small annuity to support it!* If, at any time between the years 1819 and 1835, these people had sold the last mentioned country to the United States, would not they alone who were designated as the "*western Cherokee nation*," and in occupancy, have been entitled to the amount of money agreed upon as its value? No one will assert to the contrary.

13th. Although the treaty of 1835 points to the country of the western Cherokees as in part the country of the eastern nation, yet the 15th article of that treaty *expressly excludes the western Cherokees from all participation in the money and other benefits arising from the sale of the country east, made by that treaty!!!* The 18th article also keeps up a distinct separation of the two nations! Thus this palpable injustice has been perpetrated, to wit: That portion of the Cherokee nation who emigrated to the west, under the treaties of 1817, 1819, and 1828, sold *four millions of acres*, or *one-third* (their share) *of the country east*, and received in payment, *as the full value of this land*, a country west of the Mississippi! They received, on this account, not one dollar of money. Upwards of *six teen* years after they thus disposed of their lands in the east, the other portion of the nation, who had retained *two-thirds* of the lands held in common anterior to the treaty of 1817, sold their share to the United States for the sum of *five millions of dollars*, its estimated value, and they are then forced upon the lands of the western Cherokees, for which a title is promised to them by treaty. Thus the eastern Cherokees obtain a country west, in addition to five millions of dollars paid for their lands in money; and that country is the identical one guarantied to the western Cherokees, without a dollar of boot money, in *exchange* for their one-third of the country east ceded in 1817 and 1819!!!

14th. A large majority of the Cherokee nation east, refused to accept the conditions of the treaty of 1835, and did not remove under its provisions, as will be seen by reference to the sixteenth article, which makes it obligatory upon them to remove within *two* years, from and after the ratification of the treaty. This term expired on the 28th May, 1838. After the arrival of the emigrants in 1839, THEY did not claim the country west, under the treaty of 1835. They knew that the parties to that treaty had no right to barter for the lands—*the country of the western Cherokees.* They knew that no title could be legally conferred by that treaty, and hence the importance of a *treaty of purchase* with the western

Cherokees. This *treaty of purchase* appears under the name of an "act of union," entered into (after long and violent protests from the "old settlers") with a faction of their people, after the old government was broken down. That "act of union" promises valuable consideration to be paid to the "old settlers" for a portion of their country, and incontestibly shows that a majority of the eastern nation were then convinced that they could not hold the country under the treaty of 1835, or otherwise than by *purchase from the western Cherokees.* The undersigned do not intend to say a word about that "act of union," other than that it cannot deprive them of the value of the country conveyed to them by the several treaties cited, and forcibly taken from them by the treaty of 1835, if JUSTICE be awarded by the government of the United States. Admitting even that the act of union is binding upon the parties to it, the United States are not relieved from their responsibility. They promised the eastern Cherokees a *country west of the Mississippi*, and failed to comply with that part of the compact, because the eastern nation were compelled to purchase that country from the rightful owners, hence the country of the western Cherokees must still be paid for; and if a *purchase*, such as that made by the act of union, not by "treaty or convention with the United States," could be valid, then the PARTIES who would become recipients only are changed.

The undersigned have now stated, as briefly as possible to be explicit, the grounds upon which they base their claim. They ask nothing, and never did, that can injure a single Cherokee. They claim the value of their country, which they obtained west of the Mississippi, already described, in exchange for their portion of the country east of the Mississippi, ceded by the treaties of 1817 and 1819. Or if it be decided that the country west was intended as a *gratuity* to the whole Cherokee nation, as an inducement to get them from the States, then the "western Cherokees" claim payment *in money* for the *one-third* of the country of the old nation, which they relinquished *as their share* under the above mentioned treaties, amounting in quantity to about *four millions of acres!* The country of the eastern Cherokees, ceded by the treaty of 1835, was estimated to contain *eight millions of acres*, for which they received $5,000,000! The undersigned claim payment, at the same rate, for FOUR MILLIONS!

If the treaty of 1835 had been made in pursuance of the treaty of 1817, to effect an exchange of lands, *acre* for *acre*, the eastern nation would have received 8,000,000 of acres in the west! But instead of obtaining lands in *exchange*, they purchased 800,000 acres from the United States, for which they were charged $500,000, being at the same rate they obtained for their lands in the east!!!

The undersigned believe that no Cherokee of any party, unfortunately existing among them, will dispute the justice of the claim they have presented. They desire only to be paid for THEIR COUNTRY, purchased by them at an early day, and preserved through many wars with the wild tribes at great sacrifice and hazard, and thus be placed upon an equality with their eastern brethren. If

the United States had made the proposition to purchase their country, as a home for all the Cherokees, *prior* to the treaty of 1835, it might have been done, and much that may never be forgotten have been avoided.

The undersigned, therefore, now agree to submit their claim, as above set forth, to a board of commissioners appointed by the President and Senate of the United States, invested with full power to settle the Cherokee questions, now in controversy, according to *existing treaty stipulations!* They ask that this board be composed of three commissioners, two of whom to be sound lawyers; and for the third, they would respectfully name Major Wm. Armstrong, superintendent of Indian affairs for the western territory. Before such tribunal they will meet the other delegations now in this city, from the Cherokee country west, and make a full presentment of their claims by themselves and through their counsel, and pledge themselves to agree to any settlement founded upon law and justice. The nature of their *national* claim they have briefly brought into view in this communication. The claim of some of their citizens for the loss of salines and other property, will also be submitted to the tribunal now in contemplation, and settled in the same manner. The undersigned will take this occasion to say that they will now, as the "western Cherokees" *always have done*, exert themselves to promote, instead of retard, the accomplishment of any object desired by the United States. They will sacrifice much to effect a final and satisfactory settlement of the Cherokee difficulties, which have so long distracted these people.

In thus agreeing to the submission of their claims to a tribunal such as has been proposed, they must say, in justice to themselves, that they would cheerfully submit this question to the Commissioner of Indian Affairs, to the Secretary of War, or to Congress, provided either of these tribunals could devote that time to the investigation of the whole subject which its importance demands. They know that, without a full and searching examination, *justice cannot be done to the several parties.*

We are, with esteem and veneration, your friends,

his
RICHARD × DREW,
mark.
JOHN L. McCOY,
JNO. BROWN,
his
WILLIAM × DUTCH,
mark.
E. F. PHILLIPS,
Western Cherokee delegation.

Attest: S. C. STAMBAUGH.

WASHINGTON CITY, *June* 18, 1846.

I.

WASHINGTON, *July* 20, 1846.

SIR: With the utmost confidence in the claim of the Cherokee old settlers beyond the Mississippi, we proceed to submit to the honorable board over which you preside the facts and arguments on which it is based. Deceived and abandoned as they have been, by a government which was bound to protect them, stript of a country they had bought and defended, their government prostrated by fraud and violence, and themselves driven into exile or treated as outcasts in their own land, they have, nevertheless, no need to appeal to the sympathies of this commission, or to ask anything at their hands which is not justly their due, and even guaranteed to them by solemn treaties, whose obligations they have never repudiated while claiming their benefits. All the old settlers ask is, that the commissioners will consider themselves *judges*, sworn to decide *according to law and equity*; that they will decide on this claim by the *rules of law*, and prescribe such redress as equity may seem to demand. Give us but this, and we are content. Less than this, most assuredly, the board will not consider themselves just in according, be the amount what it may. *Justice* knows no distinction in color, and never stops to count numbers. The red man and the white, the community of thousands, the nation of millions, are *equal* in her presence, and *weigh alike in her scales.* Your commission will not find one law for the white man and another for the Indian; they will not inquire whether the claimants be few or many; whether they are wise or foolish; whether they will make a good or a bad use of that which may be awarded them; the only question to be inquired into being, *what are their rights?*

A bloody war between the Cherokee nation and the whites was terminated in 1785, by the treaty of Hopewell, entered into by commissioners on the part of the United States and the head men and warriors of all the Cherokees. A portion of the Cherokee people, not willing to comply with the requisitions of that treaty, soon afterwards embarking in pirogues, descended the Tennessee, Ohio, and Mississippi rivers, to the mouth of the St. Francis, in the Spanish province of Louisiana, now the State of Arkansas, and ascending that stream formed a settlement on its banks. They thus withdrew themselves, not only from their own nation, but beyond the limits of the United States. This was the germ of the western Cherokee nation. From their first settlement in Louisiana a constant intercourse was kept up with their countrymen in the United States; and, in consequence of the superiority of their hunting grounds, they received frequent accessions to their numbers by the emigration of their eastern brethren. In a few years they found a more eligible location in the vicinity of White river, to which they removed.

The origin of the Cherokee nation west, therefore, dates back before the United States had themselves a shadow of title or claim to the lands which they occupied. For more than fifteen years

had the emigration been progressing before that region was ceded to the United States, and the Cherokees had acquired a possessory title to a considerable extent of country, at least equal to that of the more wandering bands by which they were surrounded.

The eastern Cherokees in a few years became well informed of the fine country and abundance of game which were to be found on the White river and Arkansas. The old country was environed on three sides by white settlements; the game, to which a large portion of the people looked for subsistence, was fast disappearing; and some from choice, but more from necessity, were betaking themselves to agricultural pursuits. Two parties arose in the nation, one in favor of maintaining the hunter state, and the other in favor of adopting the habits and pursuits of civilized men. The latter, that they might pursue their object unmolested, desired a division of the country and the formation of two separate communities where they then resided; but the former, though concurring with their brothers as to a division of the tribe, preferred a removal to the country beyond the Mississippi, as better adapted to their favorite pursuit. The views of the two parties, and the measures proposed by them as early as 1808, are clearly set forth in the preamble to the treaty of 1817, a portion of which is in the following words, viz:

"Whereas in the autumn of the year one thousand eight hundred and eight, a deputation from the upper and lower Cherokee towns, duly authorized by their nation, went on to the city of Washington, the first named to declare to the President of the United States their anxious desire to engage in the pursuits of agriculture and civilized life in the country they then occupied, and to make known to the President of the United States the impracticability of inducing the nation at large to do this, and to request the establishment of a division line between the upper and lower towns, so as to include all the waters of the Hiwassee river to the upper town, that, by thus contracting their society within narrow limits, they proposed to begin the establishment of fixed laws and a regular government; the deputies from the lower towns to make known their desire to continue the hunter life, and also the scarcity of game where they then lived, and, under those circumstances, their wish to remove across the Mississippi river, on some vacant lands of the United States: And whereas the President of the United States, after maturely considering the petitions of both parties, on the ninth of July, A. D. one thousand eight hundred and nine, including other subjects, answered those petitions as follows:

"'The United States, my children, are the friends of both parties, and, as far as can be reasonably asked, they are willing to satisfy the wishes of both. Those who remain may be assured of our patronage, our aid, and our good neighborhood. Those who wish to remove are permitted to send an exploring party to reconnoitre the country on the waters of the Arkansas and White rivers, and the higher up the better, as they will be the longer unapproached by our settlements, which will begin at the mouths of those rivers. The regular districts of the government of St. Louis

are already laid off to the St. Francis. When this party shall have found a tract of country suiting the emigrants, and not claimed by other Indians, we will arrange with them and you the exchange of that for a just portion of the country they leave, and to a part of which, proportioned to their numbers, they have a right. Every aid towards their removal, and what will be necessary for them there, will then be freely administered to them; and when established in their new settlements, we shall still consider them our children, give them the benefit of exchanging their peltries for what they want at our factories, and always hold them firmly by the hand.'"

Your particular attention is invoked to the foregoing extract, because it shows, beyond contradiction, that the object of both parties in 1808 was the division of the Cherokee people into two communities, independent of each other—one to be a nation of hunters, and the other a nation of agriculturists.

After these assurances from the President, the Cherokees west increased more rapidly than before in numbers and power, and prior to 1817 counted from two to three thousand souls. They made treaties with their neighbors, and exercised all the powers of an independent Indian tribe, without interference, or any claim of right to interfere, on the part of the Cherokees east.

The United States recognised them as a separate people, by sending an agent among them, and, in every other respect, treating them as entitled to the occupancy of the country in which they resided as much as any other native tribe.

In 1813, Ta-ka-to-ka, a distinguished head man, joined the western Cherokees, and immediately became their principal chief. He made no less than four treaties with the Osages, all of which were broken by that faithless people almost as soon as made, and in 1817 the western Cherokees declared war. The Osages were severely chastised; but the United States interposed and prescribed terms of peace.

These facts are introduced to prove that the Cherokee nation west existed as a separate people, recognised as such by the United States, and exercising all the powers appertaining to an independent Indian tribe, even before the treaty of 1817. Their title to the country they occupied was as perfect as that of any other Indians, and no treaty was necessary to confirm it. But from 1808 there had been an understanding between the United States, the eastern Cherokees, and such of the western Cherokees as emigrated subsequent to that date, that the United States should receive out of the Cherokee lands east an indemnity for the lands occupied by the emigrants west, and the treaty of 1817 was made in pursuance of that understanding. This treaty is in the nature of a deed of partition and exchange, to which there are three parties. Those parties, as set forth in the caption, are "*the United States*," "*the Cherokee nation east of the Mississippi river*," and "*the Cherokees on the Arkansas river*." The agents of the Cherokees on the Arkansas, as stated in the preamble, were clothed "with full power to execute a treaty relinquishing to the United States all the right, title, and

interest of all lands of right to them belonging, as part of the Cherokee nation, which they have left or which they are about to leave."

These powers they exercised, by uniting with their eastern brethren in setting off a portion of their common country, and ceding it to the United States, as shown in the first and second articles of the treaty, in exchange for an equal quantity of land to be given to the Cherokees on the Arkansas, as shown in the fifth article.

The third article provides for taking a census of the eastern and western Cherokees, and the fourth for a division of the annuities between them, in the proportion of their numbers, so ascertained. The fifth article commences as follows, viz:

"The United States bind themselves, in exchange for the lands ceded in the first and second articles hereof, to *give to that part of the Cherokee nation on the Arkansas* as much land on said river and White river as they have, or may hereafter receive from the Cherokee nation east of the Mississippi, *acre for acre*, as the just proportion *due that portion of the nation on the Arkansas, agreeable to their numbers*," &c.

The article then describes the boundaries, leaving them open to the west, and provides that all existing treaties with the Cherokee nation shall continue to be in force in reference to both parties thereof; clearly implying that such would not be the fact without such special provision. In the signature of this treaty, the eastern and western chiefs do not appear as the chiefs of *one* people, but of *two*—the eastern chiefs signing first, and the western last, with the words "*Arkansas chiefs*" prefixed to their names.

By this treaty, therefore, the government of the United States even then recognised the western Cherokees as a separate nation, with chiefs having power to cede away the right which they had, collectively, as well as individually, in the eastern Cherokee lands.

The objects proposed to be effected by this treaty were obviously as follows, viz:

1. To divide the Cherokee country east, between those who chose to remain it, and those who had emigrated or desired to emigrate to the country west of the Mississippi, and cede to the United States the portion assigned to those emigrants.

2. To give to the Cherokees west, in exchange for their portion of the eastern lands, a tract of country equal thereto, "*acre for acre.*"

3. To divide the annuities then existing, between the eastern and western Cherokees, in proportion to their numbers.

Its obvious *effect* was, to divest the western Cherokees, thenceforward, of all property in the eastern Cherokee lands; but it did not convey to the eastern Cherokees any interest in the western Cherokee lands, which, in so many words, were given "*to that part of the Cherokee nation on the Arkansas.*"

The boundaries assigned by this treaty to the Cherokees west, were a line running from the mouth of Point Remove, or Budwell's

Old Place, on the north side of the Arkansas river, to Chataunga mountain, on White river, and up and between the two rivers for quantity. The western limits of their country could not be fixed until it was ascertained how many acres of the eastern Cherokee lands had been ceded to the United States by the treaty of 1817.

Subsequent to the conclusion of this treaty, a delegation, headed by Tolontiskee, who were disposed to emigrate to Arkansas, visited Washington for the purpose of ascertaining more distinctly what were the intentions of the government in relation to the emigrants; and, particularly, whether they would, in their new homes, be again surrounded by a white population and subjected to the annoyances they desired to escape. The President said to them: "The country you give up is a good country, and it is near and very convenient to us; and I shall in turn act generously towards you, and endeavor to make you happy in your new homes on the Arkansas. I have not yet obtained the lands lying up that river to the west of your settlement. I will give instructions to Governor Clarke to hold a treaty with the Quapaws this summer, in order to purchase them; and when purchased, I will direct them to be laid off for you. It is my wish *that you should have no limits to the west*, and that you may have good mill-seats, plenty of game, and not be surrounded by the white people."

With this assurance, Tolontiskee, Captain John Rogers and many others, resolved to abandon the Cherokee country east and seek a more quiet home on the borders of the western desert.

The execution of the treaty of 1817 was resolutely opposed by a large portion of the eastern Cherokees, who at first denied its validity, and even threatened with death any one who should attempt to carry it into effect. They justly looked upon it as a scheme to extinguish the Cherokee nation east, by sending one portion of their people beyond the Mississippi and inducing the other to take reservations and become citizens of the States in which they resided. Either of these alternatives was repugnant to the feelings of a large majority of the nation, who, having made considerable advances in the arts of civilization, preferred remaining in the country of their birth. To put an end to the uproar and confusion in the nation, produced by the urgency of the emigrating agents, and enable them to settle down in the quiet enjoyment of a portion of their country, the eastern Cherokees sent a delegation to Washington, in the fall of 1818, for the purpose of putting an end to the emigration. In February, 1819, their object was effected by a new treaty, the cause and object of which are thus stated in the preamble, viz:

"*Whereas*, a greater part of the Cherokee nation have expressed an earnest desire to remain on this side of the Mississippi, and being desirous, in order to commence those measures which they deem necessary to the civilization and preservation of their nation, that the treaty between the United States and them, signed the eighth day of July, eighteen hundred and seventeen, might, without any further delay or trouble or expense of taking the census, as stipulated in said treaty, be finally adjusted, have offered to

cede to the United States a tract of country at least as extensive as that which they probably are entitled to under its provisions, the contracting parties have agreed to and concluded the following articles."

The first article of this treaty, after ceding to the United States by metes and bounds a portion of the Cherokee country east, &c., declares, "that the lands hereby ceded by the Cherokee nation are in full satisfaction of all claims which the United States have on them, on account of a cession to a *part of their nation*, who have or may hereafter emigrate to the Arkansas; and this treaty is a final adjustment of that of 8th July, 1817."

Here the fact is expressly declared, that the cession of western lands was to *a part of* their nation and not to the *whole* nation; to the part who had emigrated or were about to emigrate to Arkansas, in exclusion of that part remaining in the Cherokee country east.

The western Cherokees were not parties to this treaty, and the "final adjustment" spoken of had reference to the eastern Cherokees only.

That neither the United States nor the eastern Cherokees then supposed they had power to bind the western Cherokees without their consent, is shown on the face of this paper.

The sixth article, after providing for the division of the annuities—two-thirds to the eastern Cherokees, and one-third to the western—contains the following reservation, viz:

"But if the Cherokees west of the Mississippi object to this distribution, of which due notice shall be given them, before the expiration of one year after the ratification of this treaty, then the census, solely for distributing the annuities, shall be taken," &c.

Nothing could more conclusively show that the western Cherokees were then considered as out of the pale of the Cherokee nation east, and having separate rights which could not be divested or even modified without their consent. With their approbation, however, the proposed distribution of the annuities was carried into effect. In regard to territory, this treaty left the western Cherokees where it found them. They were entitled to as much land as had been ceded to the United States out of their ancient possessions; but how much that was, no measures were then taken to ascertain.

There was consummated a division of the Cherokee people into two tribes or nations, each with its separate property and independent government. If any evidence of this entire separation were needed, beyond the language of the treaties, we have it in the declarations of the Secretary of War, made at the time and during a series of years thereafter.

On page 190, American State Papers, Indian Affairs, volume 2, will be found a communication from John C. Calhoun, Secretary of War, dated February 11, 1819, to the Cherokee delegation who negotiated the treaty, of which the following is an extract, viz:

"The United States will extend its kindness and protection to both branches of the Cherokee nation—to that which is west as

well as that which may choose to continue to the east of the Mississippi; but, *as the Cherokees on the Arkansas are unrepresented, no particular stipulation in regard to them can be binding*, and, therefore, must be waived. The land, which has been granted to them on the Arkansas, *they will hold in the same manner, and by the same title, by which the Cherokees now hold theirs.*"

Here is a declaration of the independence of the Cherokees on the Arkansas, who could not be bound because they were not represented. Here also it is declared that they will hold the land granted to them on the Arkansas "*in the same manner, and by the same title*," that the eastern Cherokees held theirs.

On the 6th of March, 1819, the treaty having been ratified, the secretary wrote to Governor McMinn, the emigrating agent, as follows, viz:

"I have the pleasure to inform you that a treaty has been concluded with the Cherokee delegation, which, it is hoped, will be satisfactory to all parties; and you are requested, *as no further encouragement will be given to the emigrations to the Arkansas*, to take immediate measures to wind up the business in which you have been engaged under the former treaty, in the most economical manner."

"*No further encouragement*," said the secretary, "*will be given to emigrations to Arkansas.*" Could anything more clearly show that the division of the tribe was considered *final?* It would be an insult to the understanding of the commissioners to multiply words upon this point.

From that time forward, the United States treated the Cherokees east and west as *two separate nations or tribes.* The western nation had been promised not only a tract of land lying between the Arkansas and White rivers, equal to that which had been ceded to the United States in the east, but also an outlet west to the western limits of the United States, that they might never be surrounded by a white population. But on reaching their new home, the emigrants found that the whites had already intruded upon a portion of the land embraced in their outlet. The western Cherokees, in July, 1821, complained of these intrusions; and, in October of that year, the Secretary of War fully recognized their right to the outlet, by stating to them that "orders were issued sometime since for the removal of the whites from your lands, and *from the tract of country west of your reservation*, commonly called 'Lovely's purchase,' by which you *would obtain the outlet promised.*" "He (Governor Miller) is authorized to call the attention of Major Bradford to the orders referred to; and, if they should not have been previously carried into effect, *to request him to do so without delay.*" Not finding this letter among the printed documents, we here submit a copy obtained from the Indian Office, marked B.

Thus, after the operations under the treaty of 1817 had been closed, by the treaty of 1819, and emigration under the former had ceased, the right of the western Cherokees was fully recognized not only to the same quantity of land which had been relin-

quished in the east, but to the use of all the lands west thereof to the western limits of the United States; and, it is admitted on all hands, that their title to the outlet is practically the same as to the rest of their country.

This, then, was the magnificent country conceded to belong to the western Cherokees, in 1821. So full was this concession, that in 1823 and subsequent years, when it was proposed to purchase the country held by the eastern Cherokees, payment was offered in other lands west of the Mississippi, or in money at their option. At the instigation of the State of Georgia, a negotiation was opened with the eastern Cherokees, in 1823, for the purchase of the whole or a portion of their country. In State Papers, Indian Affairs, vol. 2, page 467–'8, is a letter from Duncan G. Campbell and James Meriwether, commissioners, addressed to the Cherokee council, in which we find the following passage, viz:

"Beyond the Mississippi the United States possess large domains of unsettled territory, embracing great variety of soil and climate. A portion of this nation is already there. If those with whom we are now treating are disposed to emigrate, then *we offer territory in exchange of such extent, and accompanied by such other advantages as may be agreed on.*"

To the propositions of the commissioners in every shape, the council answered, "*Brothers: We cannot accede to your application for a cession. It is the fixed and unalterable determination of this nation, never again to cede* ONE FOOT *more of land.*" "*Brothers: We beg leave to present this communication as a positive and unchangeable refusal to dispose of one foot more of land; so that no further application or anticipation of success may be encouraged on your part, and that a final close of the correspondence on this subject should herewith take place.*" "*You have been told, in positive terms, that one foot more of land cannot be sold.*"

In the winter of 1823–'4, a delegation of eastern Cherokees visited Washington, to ask that no more appropriations should be made for the purpose of holding treaties with them for the purchase of their lands, and that the United States would devise some other means to satify the claims of Georgia. In vol. 2, already quoted, page 475, is an extract of a letter from them to the President, dated January 19, 1824, in which they say: "The Cherokee nation labor under a peculiar inconvenience from the repeated appropriations which are made for the purpose of holding treaties with them for lands. This circumstance has been productive of much evil to the improvement of the nation in the arts of civilized life, as it cannot be denied that it has retarded its progress, by unsettling the prospects of individuals. The Cherokee nation have now come to the decisive and unalterable conclusion not to cede away any more lands; the limits reserved under the treaty of 1819 are not more than sufficient for their comfort and convenience, taking into consideration the great body of mountains and poor lands which can never be settled."

The Secretary of War, in his reply, dated January 30th, same page, holds the following language, viz:

"It remains for the Cherokee nation to decide for itself, whether it will contribute most to their own welfare and happiness for them to retain their present title to their lands, and remain where they are, exposed to the discontent of Georgia and the pressure of her citizens, or to cede it to the United States, for Georgia, at a fair price, to be paid either *in other lands beyond the Mississippi, or in money*, to be vested in lands to be purchased for them, as individuals, within that or any other State. Should the nation decide to relinquish its present title, and to adopt either of the alternatives suggested, this government is disposed to act generously with them. If they prefere to move in a body westward of the Mississippi, *measures will be taken to acquire lands for them there* in sufficient amount, and in the quarter most agreeable to them. Facilities will also be afforded for their removal. Should they prefer to receive the value of their title in money, with a view to purchase lands in any of the States, and become citizens thereof, in that case a fair price will be given, and proper aid afforded them for the accomplishment of their object. Should the nation divide, and a portion of it pass the Mississippi, and the residue remain on this side, measures will be taken to give effect to their wishes, by the compact to be entered into in both respects."

So far from supposing that the Cherokees east had lands west, occupied by the western Cherokees as common property, to which they might remove, the Secretary, being the same man who executed the treaties of 1817 and 1819, and actually drew up and negotiated the latter, supposed, in case of their consenting to remove, he should have to take measures "TO ACQUIRE LANDS FOR THEM THERE."

In their reply, page 272, the delegation said:

"An extent of territory twice as large, west of the Mississippi, as the one now occupied by the Cherokees east of that river, or all the money now in the coffers of your treasury, would be no inducement for the nation to exchange or to sell their country."

In a memorial to the Senate, dated April 16, 1824, page 502, the Cherokee delegation said:

"As you have a full view of the subject before your honorable body, it is not our purpose to be superfluous; therefore we will take occasion to assert, under the fullest authority, that all the sentiments expressed in relation to the disposition and determination of the nation, *never again to cede another foot of land*, are *positively* the *production* and *voice* of the *nation;* and what has been uttered by us, in the communications which we have made to the government since our arrival in this city, is expressive of the *true sentiments* of the *nation*, agreeably to our instructions, and that not *one word* of which has been *put* in *our mouth* by a *white man*."

Passing over much of a similar character interspersed throughout the public document, we content ourselves with quoting a proposition made as late as 1832, by Elisha K. Chester, on the authority of the War Department. It was as follows, viz:

"Such a course would enable the President, should it be found

necessary, to *enter into negotiations with any of the tribes west of the Mississippi*, in order to effect any desired arrangement for the Cherokees."

The eastern Cherokees themselves set up no claim to a common interest in the Cherokee lands west of the Mississippi. This is abundantly shown by their inflexible resolution, often avowed, *never to sell another foot* of their country east, but continue to occupy it through all time to come. But we are not left to the evidence of this *implied* disclaimer, strong as it is. When John Ross was negotiating for the sale of the country east in 1835, he stated that one necessary object to be accomplished by the funds to be received for it, was *to buy a country for the eastern Cherokees to live in*. One argument used by Ross and his associates, to prevent acquiescence in the treaty of 1835 by the eastern Cherokees, was that neither the United States nor themselves had any title to the lands held by the western Cherokees, upon which it was proposed to place them. In 1837, there was published a letter from John Ross to a gentleman in Philadelphia, in which he said, in reference to the treaty of 1819:

"A piece of permanent policy was avowed, and the treaty of 1819 was regarded as a final measure. Such of the nation as were disposed to emigrate beyond the Mississippi, and to retain their original hunter habits, were provided for; those who preferred remaining, and to pursue the arts of civilization, were to remain; *property which had been held in common, was to be enjoyed in severalty;* the limits of individual rights were to be fixed, and permanent interests to be held in land."

If these treaties, and this evidence, be not sufficient to prove that the title acquired by the western Cherokees to their country in the west, by the treaty of 1817, was *exclusive* and *not in common* with their eastern brothers, it seems to us impossible to prove any proposition. The United States, the eastern Cherokees, and the western Cherokees, all concurred, by act and deed, in declaring the latter to be *a separate and independent tribe*, with separate and independent property. Prior to the irruption of the eastern Cherokees under John Ross, in 1838, they had also their *separate and independent government*.

Takatoka had been principal chief of the western Cherokees from 1813 to 1818, when Tolontiskee, who emigrated under the treaty of 1817, arrived in the country, and was recognised in that character by the government of the United States. His authority was reluctantly acknowledged by Takatoka and his adherents. Tolontiskee died not long after his removal, when competition for the chieftainship arose between Jolly, his lineal descendant, and the old chief Takatoka. Jolly, however, prevailed; and being recognised by the United States, continued in that position until the establishment of the new government in 1824.

In that year a general council was held by the western Cherokees for the purpose of framing a written constitution and adopting a code of laws. After several fruitless efforts, the council appointed Daniel Brown to prepare a form of government and a code

of laws, to be reported to an adjourned meeting a month thereafter. He faithfully performed the duty, and his reports were unanimously adopted. The new government had three branches—the legislative, executive, and judiciary. The legislative consisted of a national committee and a national council elected for one year; the executive, of a principal chief and an assistant principal chief, who was *ex officio* president of the council, both elected for four years; the judiciary consisted of a supreme court, circuit, and district courts, the judges of the supreme and circuit courts chosen by the council for four years, and the judges of the district court for one. The laws then enacted were few, simple, and plain, well adapted to the condition of the western Cherokees. The government went immediately into operation.

Jolly was elected principal chief and Takatoka assistant principal chief. On the death of Jolly, John Brown, now of the western delegation, was elected, and after his departure for Mexico, John Rogers, late also of the delegation, was raised to that dignity.

The eastern Cherokees also had their government, with a written constitution, on this side of the Mississippi. If, indeed, the title of the western Cherokees to their lands was not exclusive, here was *a government without a country*, or a country over which two governments had precisely the same jurisdiction, an absurdity which no man of that day, white or red, had the talent to conceive or the boldness to avow.

Driven from the ground that the Cherokee people and lands were not divided by the treaty of 1817, our adversaries take shelter under the treaty of 1828 with the western Cherokees, which, they maintain, virtually granted to the eastern Cherokees a common interest in the western Cherokee lands. It is not difficult to drive them from this position also.

We beg the commission first to mark who are the *parties* to this treaty. They are "James Barbour, Secretary of War, being specially authorized, &c., and the undersigned chiefs and head men of *the Cherokee nation of Indians west of the Mississippi*, they being duly authorized and empowered by *their nation*."

If the Cherokees were not divided into two independent communities, there was no such "*nation*."

What was the *subject* of this treaty? An exchange of lands. Between whom? Not between the United States and the whole Cherokee people, east and west, but between the United States and "*the Cherokees on the Arkansas*"—"*the Cherokee nation of Indians west of the Mississippi.*" Is not this an acknowledgment that the Cherokees on the Arkansas were a separate nation and the exclusive owners of the country they occupied? Does it now lay in the mouth of the United States to say, that there was no such "*nation*," and no such *exclusive title*? It would be a confession that they had been guilty of falsehood and fraud to obtain possession of a large tract of country now embraced within the State of Arkansas—*falsehood* in asserting the existence of a nation which did not exist; *fraud* in purchasing from a minority of the Cherokee people, without the consent or even knowledge of the

majority, a large portion of their common property. Not an eastern Cherokee was consulted about that treaty; not one of them had or supposed he had the least title or interest in the lands sold, or the lands bought. If this was an error—if the right of property was in the *whole Cherokee people*, and not in the western Cherokees *exclusively*, the sale of lands was illegal and void, and a large tract of country within the State of Arkansas is now the property of the "Cherokee nation." Two-thirds of the nation were unrepresented in that negotiation, and John Ross and his "constituted authorities" have now a right to reclaim the cession of lands made by the stragglers from his nation beyond the Mississippi.

There is no warrant, as this commission must be satisfied, for charging the United States with falsehood and fraud in this transaction. There *was* such a nation as "*the Cherokee nation of Indians beyond the Mississippi;*" that "*nation*" were the exclusive owners of the country which they occupied and governed; they had a right to sell it and take other lands and money in payment, as they actually did.

Let us now analyze the provisions of the treaty of 1828, bearing upon this subject.

The preamble sets forth the motives and rights of the parties in explanation of the subsequent stipulations. The first article fixes the western limits of Arkansas. By the second, "the United States agree to possess the Cherokees, and to guaranty it to them forever; and that guaranty is hereby solemnly pledged, of seven million acres of land," &c., with "a perpetual outlet west; and a free and unmolested use of all the country lying west of the western boundary of the above described limits, and as far west as the sovereignty of the United States and their right of soil extend." By the fifth article, "the United States, in consideration of the inconvenience and trouble attending the removal, and on account of the reduced value of a great portion of the lands herein ceded to the Cherokees, compared with that of those in Arkansas, which were made theirs by the treaty of 1817, and convention of 1819, will pay to the Cherokees," &c., "the sum of fifty thousand dollars;" and, for the same consideration, proceeds to secure to them many other pecuniary benefits. The sixth article provides that, "when they may wish to lay off their lands, and *own them individually*, a surveyor shall be sent to make the surveys at the cost of the United States." By the seventh article, the western Cherokees cede to the United States all their lands lying within the limits of Arkansas. The eighth article commences with a preamble in the following words, viz:

"The Cherokee nation west of the Mississippi, having, by this agreement, freed themselves from the harassing and ruinous effects consequent upon a location amidst a white population, and secured to themselves and their posterity, under the solemn sanction of the guaranty of the United States, as contained in this agreement, a large extent of unembarrassed country; and that their brothers, yet remaining in the States, may be induced to join them, and enjoy the repose and blessings of such a state in the future," &c. The

stipulation appended to this preamble commences thus: "It is further agreed, *on the part of the United States*, that to each head of a Cherokee family, now residing within the chartered limits of Georgia," &c., "who may desire to remove west, shall be given," &c., "a good rifle, a blanket, a kettle, and five pounds of tobacco," &c. We pray you to read the whole section, and then say whether its *binding* effect would not be precisely the same if the preamble were omitted altogether? If so, *what obligation did the western Cherokees contract by this section?*

We insist that one of two rules of construction shall be applied to this treaty, and we care not which, viz: That it shall be construed *according to the rules of law*, or *according to the rules of equity and good conscience*. It has been maintained that this treaty made the lands of the western Cherokees the *common property of all the Cherokees*, and justified the United States in sending upon them the whole Cherokee nation east without asking the further consent of the Cherokees west. In law, how could a title to lands be conveyed to a people *who were not a party to the deed?* The idea is absurd. This treaty contained no grant whatever to the Cherokee nation east. All its grants and concessions, so far as made by the western Cherokees, were to the United States. And what did they grant or concede to the United States in the eighth article? Nothing whatever. On the contrary, the only grant or concession in that article is *from* the United States *to* the western Cherokees. The latter were anxious that their eastern brothers should come and live with them; and the former, being desirous of serving them, agreed to pay the expenses of emigrants. *This article imposed an obligation on the United States for the benefit of the western Cherokees.* This is its only true *legal* construction. Yet the construction put upon it completely reverses the position of the parties, and imposes an obligation on the western Cherokees for the benefit of the United States. It is maintained that the western Cherokees bound themselves to receive the eastern Cherokees arriving in their country, either singly or by thousands, in all time to come, and to admit them to a joint participation in all their rights, privileges, and property.

Let us admit, for the sake of argument, that the preamble to the stipulation, in the eighth article, is itself a stipulation which bound the western Cherokees irrevocably to receive the eastern Cherokees as naturalized citizens. What was the extent of this assumed stipulation and concession? The object of the government, as expressed in the preamble to the treaty, extended only to providing a permanent home for those eastern Cherokees "who may *wish to join their brothers of the west.*" The good wishes of the western Cherokees, as expressed in the preamble of the eighth article, extended only to their brothers, yet remaining in the States, "*who may be induced to join them.*" And the provision made for emigrants embraces only those "*who may desire to remove west.*" If, therefore, the mere expression of kind feelings by the western Cherokees towards their eastern brothers is to be construed into an obligation to receive them as citizens, it can only embrace those

who "may *wish* to join their brothers of the west;" who may go out as *voluntary emigrants*, incorporate themselves with their body politic, and submit to their laws. There is not a pretext in any word contained in the treaty which can extend this extraordinary construction further, and bind the western Cherokees to receive any of their eastern brothers who might be *thrust* over the Mississippi contrary to their will, whether singly or by hordes. Much less, if possible, were they bound to receive and treat as citizens those who might come with arms in their hands to overthrow their government, and seize upon their country! But what have we seen? No sooner had the treaty of 1828 been adopted, than the State of Georgia commenced a course of legislation designed to *compel* the eastern Cherokees to remove beyond Arkansas. That very year an act was passed annexing the Cherokee country to one of the counties, and extending over the Indians the laws of the State. The Cherokees met it by denouncing death against any of their own people who should propose selling their country east, and removing to Arkansas. Georgia proceeded to abolish the Cherokee government, and impose penalties on all who should exercise authority under it; to survey and sell, to her white citizens, the whole Cherokee country, reserving present possession of their improvements to the Cherokees; to disqualify the Cherokees from being witnesses in their courts; to forbid the employment of a white man by a Cherokee, or of a Cherokee by a white man; and, finally, to dispossess the Cherokees of their improvements, under the most frivolous pretexts. A white population poured into the Cherokee country; it was divided into several counties; tribunals were established to enforce the Georgia laws; and an armed force stationed in the country to keep the Indians in awe. The States of Tennessee, Alabama, and North Carolina, followed the example of Georgia. The Cherokee government ceased to be, and the people became outcasts in their own land.

The Cherokees appealed to the Supreme Court of the United States to sustain their government against that of Georgia, but the court decided that the Cherokee community were not such a State as could maintain an action in that tribunal. Writs of error were obtained in that court to protect individual Cherokees, but they were disregarded by the State, and could not be executed by the United States without a civil war. Perceiving that the Executive of the United States would not resist the State authorities *by force*, and that no alternative was left the eastern Cherokees but emigration or annihilation, the more honest and patriotic of the nation turned their thoughts towards Arkansas. A treaty party sprang up, headed by Major Ridge, John Ridge, and Elias Boudinot. After strenuous attempts by the government to bring John Ross and the other chiefs into the measure, a treaty was finally made in December, 1835, with a council composed of a small portion of the nation, the Ross party refusing to attend. In the belief that the liberality of this treaty would induce a majority of the nation to acquiesce in it, President Jackson sent it to the Senate, by whom it was ratified. More than four-fifths of the nation, however, de-

nounced the treaty as a fraud on the Cherokees and on the United States, denied its validity and refused to emigrate. The United States were finally obliged to send their troops into the country and force them into the Cherokee country west at the point of the bayonet. Now, if we admit that *preambles* are STIPULATIONS, and that the western Cherokees were legally bound to receive those who *desired* to join them, were they also bound to furnish a home to every *unwilling* Cherokee east who might be *thrust among them at the point of the bayonet?*

Let us look a little further into this emigration. On the 1st day of August, 1838, when the eastern Cherokees had been collected together at "Aquohee camp," or as they called it, "*captured*," preparatory to removal, they held a general convention composed of "the committee and council and people of the Cherokee nation," at which they adopted sundry resolutions declaratory of their rights and of the character in which they went to Arkansas. The first resolution asserted *their title to the lands east*, notwithstanding the treaty of 1835, which they declared to be void. The second was in the following words, viz:

"And whereas the Cherokee people have existed as a distinct national community, in the possession and exercise of the appropriate and essential attributes of sovereignty, for a period extending into antiquity beyond the dates and records and memory of man; and whereas these attributes, with the rights and franchises which they involve, have never been reliquished by the Cherokee people; and whereas the natural, political, and moral relations subsisting among the citizens of the Cherokee nation towards each other and towards the body politic, cannot, in reason and justice, be dissolved by the *expulsion of the nation from its own territory*, by the power of the United States government; *Resolved*, &c., That the inherent sovereignty of the Cherokee nation, together with the constitution, laws, and usages of the same, are, and by the authority aforesaid, hereby declared to be in full force and virtue, and shall continue so to be in perpetuity, subject to such modifications as the general welfare may render expedient." (See Doc. 129, H. R., 1st session 26th Congress, p. 37.)

Here then was A NATION, with an organized government, starting for the Cherokee country west. Had the *Cherokee nation east* a legal right, under the treaty of 1828, to seat itself down in the *Cherokee country west*, and set up its constitution, laws, and authorities there, without the *consent* of the government or people of the Cherokee nation west?

On the 10th June, 1839, after the arrival of John Ross with his *nation* in the country west, he addressed a letter to the western chiefs, in which he said: "But after the seizure and captivity of the whole Cherokee people east, by the military power of the United States government, a set of resolutions was adopted in general council expressive of their sentiments and reaffirming all their previous acts in relation to the rights and interests of the nation. From these facts, it will be clearly seen that the great body of the people who have recently been removed into this country *emigra-*

ted in their national character, with all the attributes from time immemorial which belonged to them as a distinct community, and which they have never surrendered." "*The national committee and council of the eastern Cherokees*" were then in session *on the soil of the western Cherokees!* When the national council of the latter, also then in session, expressed the opinion that by coming into *their country* the emigrants from the east came under the government and laws *therein established*, and that it was absurd "for laws created *beyond the Mississippi* to be brought here, brought to life, and to have full force in *this nation*," the council of the eastern Cherokees used the following language in replying, viz: "That the ancient integrity of the eastern nation should be dissolved and her existence annihilated without discussion, without conditions, and without action of any kind, is utterly inconceivable;" and they proceeded to adopt the following resolution, viz:

"*Resolved*, That the declarations of the general council of the nation at Aquohee camp, on the 1st day of August, 1838, in reference to attributes of sovereignty derived from our fathers, be, and they are hereby, *reasserted* and confirmed." (See Doc. 129, as above, pages 48, 51, 53.)

Here, then, were two sovereignties on the same soil; one originally established there, and the other imported from the east. Was this kind of emigration *legally authorized* by the treaty of 1828? By any rule of legal construction ever recognised among civilized nations, can that treaty be made, in its *language* or *intent*, to authorize the United States or the Cherokees east to remove an *established government* into the territories of the western Cherokees? Did those people intend to authorize a rival government on their own soil, or was the result a *legal* consequence of their act?

The natural effect of two sovereignties claiming a jurisdiction over the same soil speedily followed. John Brown, now one of the delegates lately representing the western Cherokees, was then their principal chief. The imported community far exceeded in numbers that of which he was the head, and the consequence was that his government *was put down by violence*. Was *this* the legal effect of those stipulations in the treaty of 1828 to which the western Cherokees gave their consent? Are these the "repose and blessings" in which they invited their "eastern brothers to participate?"

We need not anticipate your answer. On the assumption that the preambles to the treaty and to the eighth article were stipulations of the most positive character, binding the western Cherokees forever to receive such of their eastern brothers as *desired* to join them, they could not bind them to admit such as were *forced* into their country contrary to their will, and much less a whole community, with an organised government strong enough to overthrow their own institutions, seize upon their property, reduce them to subjection, or drive them into exile. If, therefore, the rules of strict legal construction be applied to the treaty of 1828, it is impossible to find in any of its provisions the *least pretence* for holding the western Cherokees bound to admit *forced* emigrants

upon their territory; and much less another organized community to overpower and destroy them.

If the rules of legal construction be thrown aside, and we resort to "*equity* and *good conscience*" as our guide in ascertaining the rights and obligations of the western Cherokees, their wrongs will appear none the less aggravated. There can be no mistake as to the kind of emigration contemplated by both parties to the treaty of 1828. It was to be a *willing* emigration—an emigration of *individuals* who were expected to settle down quietly under the Cherokee government west, and incorporate themselves into that community. To produce such an emigration the United States agreed to hold out the inducements mentioned in the eighth article. Equity and good conscience required the western Cherokees to receive all such emigrants, and equally forbade the United States to employ any compulsory means. Very few of the Cherokees east really "wished to join their brothers of the west," or could "be induced" to do so by the advantages held out in that treaty. A portion were compelled to remove, *unwillingly*, by the legislation of the States; but the greater portion by the bayonets of the United States. *Good conscience* did not require of the western Cherokees to admit into their community or their country either of these classes of emigrants, even had they been presented singly and not in masses sufficient to overwhelm and conquer them. *Good conscience* revolts at the assumption which would authorize the United States to *destroy* the western Cherokees, under cover of a treaty professing to secure their happiness "in all future time." In the fullness of their gratitude and joy at the prospect of being "freed from the harassing and ruinous effects consequent upon a location amidst a white population," they invited their eastern brothers to join them; and, to enable them so to do, secured the friendly aid of the United States. *Good conscience* will not now permit these States to point to that invitation as authority for bringing upon them a greater ruin, and make their brotherly kindness an apology for hurling upon them swift destruction. *Good conscience* will not permit us to tell the western Cherokees—*you consented to your own ruin, and on your own heads be the blame!* Every man knows that such was not their object or intention, even if such were the necessary effect of their language.

Whether, therefore, we construe the treaty of 1828 by *legal rules*, or by the dictates of *a good conscience*, we shall find in it no authority to the United States to force upon the western Cherokees unwilling emigrants, or to throw upon them the whole community east to overrun their country, overthrow their government, and subject them to alien customs and foreign institutions. To us it is strange that any difference of opinion could arise out of the treaty of 1828, so plain are its provisions. The parties to it were the "United States and the Cherokee nation west." The Cherokees east had nothing to do with it. The Cherokees west, and not the whole Cherokee people, ceded their lands in Arkansas, and received in exchange lands further west. If the Cherokees east acquired an interest in the lands *received* by their western brothers,

they must have had an interest in those *ceded!* And, if so, they have not parted with it to this day, and a large section of Arkansas is now Cherokee property. The eastern Cherokees never claimed or received any portion of the money or annuities, granted by the fifth article, in *part* consideration for the lands ceded; and, upon the same principle, how could they claim any interest in the lands which constituted the *other part?* Under the sixth article, the western Cherokees might have proceeded at once to divide their lands and "own them individually"—a provision incompatible with the existence of any common interest in the eastern Cherokees. If, in 1833, they had demanded a survey, and each had acquired a vested right to his share of the lands, could John Ross and the entire eastern nation have come in nine years afterwards and claimed a new division by virtue of any grant to them in this treaty or any other?

The United States have had their naturalization laws from the origin of their government, inviting their eastern brethren "to join *them*, and enjoy the repose and blessings" to be found in the "large extent of unembarrassed country" which *they* have "secured to themselves and their posterity;" and under these laws every subject of the British and French monarchs has had a right to become a citizen of the United States and a joint owner of our public lands if he chose to do so. But does it follow that every man in those kingdoms became entitled to a common interest in those lands by the enactment of those laws without voluntary emigration and naturalization? Does it follow that the whole population of the British Isles have a right to precipitate themselves in mass upon our shores, with their king, lords, and commons, to overthrow our government, take possession of our country, and make us outcasts in our own land? Such has been the precise fate of the western Cherokees under a naturalization system more prompt, but in principle precisely like that of the United States, shadowed forth in the treaty of 1828.

But let us suppose that the 8th article of the treaty contained *mutual stipulations*, by which the western Cherokees agreed to receive emigrants from the east on condition that the United States should pay their expenses, furnish them with a rifle, kettle, &c.; were not such stipulations equally binding on both parties to the contract? Yet, in June, 1833, the United States *refused longer to fulfil the stipulation on their part.* In that month, without the knowledge or consent of the western Cherokees, orders were given by the government to stop the emigration under that treaty, thus committing a palpable violation of its provisions on their part. It is not pretended that a single Cherokee after that date emigrated to the west under the treaty of 1828. If, then, the article had contained mutual stipulations, the western Cherokees would have been absolved from their obligation by the refusal of the United States to fulfil theirs. Much less could they be held to the *concession of a privilege* which had been voluntarily made and could be withdrawn at will, a privilege enjoyed by every eastern Cherokee who chose to emigrate from 1817 to 1835, which was practically neither

enlarged nor curtailed by the treaty of 1828. The following points in relation to this treaty we take to be conclusively established, viz:

1. It was a treaty between two communities, the United States and the "*Cherokee nation of Indians west of the Mississippi.*"

2. The lands bought by the United States in the treaty were purchased of that "*nation*" and no other; and the lands ceded and money paid as the consideration for that purchase were ceded and paid to "*that nation*" and no other. No grant could be made to the "Cherokee nation east," because they were not a party to the treaty; and to obtain the legal and true meaning of the term "Cherokee nation" used in the treaty, reference must be had to the party with whom the United States were treating.

3. So far from granting to the eastern Cherokees a common interest in their country, the western Cherokees *did not grant to them the right of emigration*, there being nothing on that subject in the whole treaty which they had not a right to revoke at will, as much as the United States have to repeal their naturalization laws.

4. Least of all did this treaty bind the western Cherokees to receive upon their lands the whole eastern nation, not coming voluntarily to join them and settle down under their government and laws, but as an organized community, putting down that government, and seizing on the country as conquerors.

5. Finally, to suppose that the western Cherokees, in negotiating the treaty of 1828, intended to grant rights or powers which, rightfully exercised, could bring upon them the calamities they have endured, is to suppose that they voluntarily consigned to destruction their government, their country, and themselves; and if legal warrant be found for all this in that treaty, it was a fearful fraud upon them, which, had they been a powerful people instead of weak and dependent, would long since have been atoned for in blood.

Driven from their position upon the treaty of 1828, our adversaries, as a last resort, take shelter under the pretended act of union of 1840.

They first maintain that the Cherokee nation *never was divided*, and that the Cherokee lands west *always were* common property. With singular inconsistency they then maintain that the treaty of 1828 *made the western lands common property*, thereby admitting that they were not so before.

With still greater inconsistency they maintain that the act of union united the two communities into one, and extinguished the title of the western Cherokees to their lands, thereby admitting that the tribe *had* been divided, and that each division *had its separate property*.

The very setting up of this act of union is an admission of all we contend for under the treaties of 1817, 1819, 1828, and 1833. It is an admission that there *were* two communities to be united, and that they held separate property, which could not be made common without their separate consent. But for the industry of

our adversaries, who seize on every circumstance to invalidate our title, we might have commenced our argument at this point.

It is an instrument *called* an act of union, executed in 1840, on which our adversaries rely. Now, we fearlessly deny that the instrument alluded to *was or is* an act of union, or an act of any sort, as between two communities. The Ross party considered, and now consider, the western Cherokee nation as *extinguished and merged in the mass by an act done the year before!* They did then and do now date their union with the western Cherokees, and the origin of the reunited nation in 1839, and not in 1840. In proof of this we point to the code of laws printed by authority of the Cherokee government, where you will find the act of union on which they rely as having extinguished the western Cherokee nation, and the constitution built upon it; both dated in 1839. Running over that book you will find *no trace* of the act of 1840, now plead to relieve the United States from their just responsibilities; *no trace* of the union of two communities; not the *slightest notice* of a proceeding now deemed sufficient to denationalize the western Cherokees and strip them of their country. But, to enable you fully to comprehend this point, we are obliged to give a history, somewhat at length, of the events which led to this so called act of union.

The first wrong done to the western Cherokees by the United States is found in the second and third articles of the treaty of 1835, concluded with a portion of the Cherokee nation east. (See Treaty-book, pages 635–'6.) Notwithstanding the treaties of 1817, 1819, 1828, and 1833, which ceded and guarantied the Cherokee country *west* to the "western Cherokees" *exclusively*, treating them as fully competent to *give* and *take* title thereto, without consulting the Cherokees east, it is here assumed (contrary to the established law and notorious fact) that they *were not a separate community!* that the territory they had bought with their portion of the lands east, *after division*, was not their own! that, instead of acquiring a country for themselves by the treaties of 1828 and 1833, as they had supposed, they were dealing for the whole Cherokee race! that lands, which they were competent to acquire without the consent or knowledge of the eastern Cherokees, might be lawfully taken without their own consent or knowledge! and that the separation of the hunters from the cultivators of the soil, the division of country, the emigration to Arkansas, the establishment of two governments, the treaties with the United States recognizing their separate existence with separate territories, governments, annuities, and privileges, were all but a series of delusive dreams, from which they were now to be awakened, by finding that their nation had never been *divided;* and, that, notwithstanding their treaties and other evidences to the contrary, their lands in the west had always been the *common property* of themselves and their eastern brothers, who never needed their invitation and consent to come and enjoy them! If their astonishment was great at finding their eastern brothers joint owners of their lands, without emigration or naturalization, it could not be less at finding themselves denied, by the same instrument, a like joint interest in the Chero-

kee lands east. This principle will be found in the 15th article, which provides that the purchase money for the country *east*, after satisfying certain claims, "shall be equally divided between all the people belonging to the Cherokee nation *east*, according to the census just completed, and such Cherokees as have removed west *since June*, 1833;" thus excluding all who had removed *prior* to that date! Thus was it assumed that the Cherokee country WEST was *common property*, while the Cherokee country EAST was *not* common property! and yet it is said that the Cherokees were but *one people!*

A faint effort has been made to prove that the western Cherokees assented to the treaty of 1835, when, in fact, they exerted themselves to prevent both its conclusion and ratification. At page 377 of Senate document 120, 1st session 25th Congress, will be found a letter from Major F. W. Armstrong, acting superintendent, dated Choctaw Agency, June 15, 1835, in which he states that a council of the western Cherokees had been "convened expressly to take into consideration the treaty offered to the Cherokees east." "It is my duty to inform you," said he, "of a fact that is well known here, that these people are dissatisfied, and will, I have no doubt, object to the views of the government *in uniting* the Cherokees, unless they can have their wishes, which, I assure you are not to be found in the treaty intended to be laid before the eastern Cherokees." On page 378, same document, will be found a letter from the western council to their agent, informing him of the appointment of a delegation consisting of Joseph Vann, William S. Coody, John Smith, and John Drew, who were instructed "to go to the eastern Cherokees, and if possible, to effect such arrangements as will *unite* the TWO PEOPLE in *one* upon the Arkansas," &c. At page 155, will be found a letter from the Acting Secretary of War, dated July 27, 1835, instructing the commissioners appointed to negotiate a treaty, that "if the delegation (meaning the delegates above named) present themselves, they must not, under any circumstances, be admitted to the council, or recognized in any manner! Their interference is *unauthorized* and *officious;* and you are requested, by the exercise of every proper means, to counteract every effort they make out of the council to obstruct the progress of the treaty." The commissioners were also requested to examine the intercourse law, to see whether this delegation could not be *arrested and sent out of the country!* and were further instructed to inform the delegates that, if they came to Washington they would not be received, nor any business transacted with them. At page 481–'2, will be found a letter from one of the commissioners, dated October 8, 1835, noticing the arrival of this delegation, in which he says: "If they are true and faithful, they may be of great service; and, if they are not, I have told *Coody* what I shall be *obliged* to do in reference to them."

Appended to the treaty of 1835, will be found an instrument signed by *James Rogers* and *John Smith*, as delegates from the western Cherokees, in which they say they "*agree to it in behalf of the western Cherokees;*" reserving, however, "*any claims of the*

western Cherokees against the United States." James Rogers, as has been shown, *was not one of the delegation appointed by the western council*, and seems to have been selected for the occasion by the United States commissioner.

At page 496 will be found a letter from one of the commissioners, dated December 31, 1835, informing the Indian office of the conclusion of the treaty; and in that letter he says: "I have also succeeded in obtaining the signatures of two of the delegates of the western Cherokees, approving the treaty *in toto*, and inviting their brethren to an equal participation in all the benefits and privileges of the Cherokee country west. This I deemed a very important measure; and to *effect it*, I agreed to *furnish them money* sufficient to bear their expenses to Washington, and they will come on when the delegates from this part of the country go on, which will be on the third Monday in January."

The western Cherokees, however, did not approve of this unauthorized and purchased approval of *two* of their people. At page 659 may be found a letter from their chiefs to the chiefs of the treaty party, in which their objections to the treaty are stated. At the bottom of this letter is a note, signed by *John Smith*, in the following words: "Now you see from this letter *what I told you all when you wished me to sign the treaty.* I told you that I would sign it, though it *was not agreeable to our instructions*; and you *would not agree to any of my propositions*; you and our people can settle it yourselves hereafter."

Without stopping to inquire who was right or who was wrong on this occasion, we beg you to consider how these people have been treated. The proposed treaty involved their property, their government, their existence as a community, together with their individual safety and happiness. Yet they are told that any interference on their part was "*unauthorized and officious.*" Though the treaty on the tapis was based on the assumption that the Cherokees east and west were *one people*, the latter are not only denied all right to a voice in their common affairs, but are considered so thoroughly foreign that they might, perchance be arrested and sent out from among their own people as *intruders*.

When, afterwards, they appear on the ground, the commissioner thinks "*if they are true and faithful*"—that is, if they will *violate their instructions and betray their people*—"they may be of great service." If not, why, they have no business there, and he knows what to do with them. And he deems it "a very important measure" to have bought the approval of one of the delegates, at the price of a trip to Wasington, and hired another Cherokee to assume the *character of a delegate*, and join in the act at the same price, with an additional *gratuity* of $2,175 paid to each.

This whole matter evinces a consciousness that a wrong was about being committed on the western Cherokees, which their seeming consent was deemed "important" to palliate. But it is not necessary to dwell on this shameful disclosure. Nor did the western Cherokees acquiesce in the treaty after it was formed. In the fall of 1836 they appointed a delegation to visit Washington, and there,

in conjunction with a delegation from the eastern Cherokees, protest against the execution of the treaty. They performed the duty by affixing their names to the protests of the eastern Cherokees. In that to the President, dated March 16, 1837, the following language is used, viz:

"The Cherokee nation never authorized the formation of this spurious treaty. They never conferred upon the individuals who signed it any authority to give their assent. They have never recognised its validity, and never can. They have protested against it as a fraud upon themselves and upon the United States." (Document 120 aforesaid, page 803.)

The memorial to Congress, dated February 22, 1837, speaks thus, viz:

"In the name of the whole Cherokee nation we protest against this unhallowed, unauthorized, and unacknowledged compact. We deny its binding force. We recognise none of its stipulations. If, contrary to every principle of justice, it is to be enforced upon us, we shall at least be free from the disgrace of self-humiliation." (Same document page 810.)

From that time down to this the western Cherokees have never given their assent to the treaty of 1835. All its melancholy consequences have been *forced* upon them by the hand of power.

We have, already, presented to you the community of eastern Cherokees transported to the soil of the western, and there setting up their constitution, laws, and authorities. Among all their extravagant assumptions, they did not claim any rightful jurisdiction over the persons of the western Cherokees without their consent. On the 10th of June, 1839, when the councils of the two communities were in session, having been called together for the purpose of uniting them into one, *John Ross*, in his address to the western Cherokees, said: "Notwithstanding the late emigrants removed in their *national* capacity, and constitute a large majority, yet there is no intention or desire on the part of their representatives, to propose or require anything but what may be strictly equitable and just, and satisfactory to the people. Being persuaded that these feelings will be fully reciprocated, I trust that the subject matter of this council will be referred to the respective representatives of the eastern and western people; and that, in their joint deliberations, we may speedily come to some satisfactory conclusion for the permanent *reunion* and welfare of our nation." When the "old settlers" on the 11th (next day) invited the eastern Cherokees to state more clearly what their views and real wishes were, they replied, on the 13th, "that we desire to see the eastern and western Cherokees become *reunited* and live as *one people*." To effect that object, they proposed that each party should appoint an equal number, who, together, should form a committee for the purpose of preparing a code of laws for the new community to be formed out of the two, and "that the respective laws and authorities of the eastern and western Cherokees shall continue to be exercised and enforced among themselves until repealed, and the new government which may be adopted shall be organized and take effect,"

&c. (See Doc. 129, House of Reps., 1st session 26th Congress, pp. 48, 49, 50.)

The old settlers very naturally concluded that the eastern Cherokees, by coming into their country had placed themselves under the government already existing; and though willing that their eastern brothers should, under the circumstances, at once become citizens, and through the next elections (then but a few months distant) possess themselves of the offices, they would not consent, upon the instant, to change the entire government for their accommodation. Their reply to the proposals of the *Ross* nation (as simple and clear in diction as it is sound in principle) may be found at page 51 of document 129 aforesaid.

The POWER which the chiefs of this eastern nation, precipitated into the west, could not at once *peacefully* grasp, they then determined to seize by *violence*. Having induced a few of the old settlers to act with them, they held a *species* of popular meeting on the spot, at which, on the 20th of June, they called a convention of the eastern and western Cherokees, to assemble at Illinois camp ground on the 1st of July, for the purpose of effecting the desired union, and establishing a new government. Neither government as such had any voice in these proceedings, which were altogether revolutionary. (See page 53.)

The council of the "old settlers" and their people had retired to their homes. The Ridges and Boudinot, who had evinced a determination to submit to the established government, and it was supposed had counselled the "old settlers," with their friends of the treaty party, had also dispersed. The revolutionary conclave remained at Ta-ka-to-ka until the 21st of June, concocting their measures. The first result exhibited itself on the 22d, in the dastardly murder of the two Ridges and Boudinot by three bands of assassins, who had evidently gone forth from the council ground for that purpose. Three of the greatest obstacles to the projected revolution were thus removed, and a significant warning was given to all others who might attempt to obstruct Mr. Ross and his adherents in their ambitious designs.

Passing over the intervening scenes, we find the revolutionary convention in session at Illinois camp ground on the 2d of July. How to get rid of the established government of the western Cherokees was their first difficulty. A few recreant "old settlers" were induced on that day to invite their ruling chiefs to join the convention. This was followed on the 5th by an invitation, in the "kindest feelings," from John Ross and his associates. Not willing to join in the revolution, the "old settlers," under the advice of the United States officers, made sundry propositions for a pacific union of the two communities, all of which were evaded or rejected by the revolutionists, who now claimed to act by an authority above and beyond all organized government. Despairing of any amicable arrangements, the chiefs of the existing government, on the 9th of August, addressed a letter to Captain William Armstrong, clearly setting forth their rights and condition, and closing as follows, viz:

"We now, therefore, make our appeal to you, and through you to the government of the United States, to ask that we may be sustained in the enjoyment of our rights and in the execution of our laws; and that the lives and liberties of all our citizens may be protected from violence and disturbance, as promised by treaty." For this paper see document 129, pages 100, 101. It is interesting as setting forth, with much brevity and clearness, the facts and principles on which the appeal was based.

This appropriate appeal of the existing government to the United States was considered a crime by the revolutionists; and that portion of them which claimed to be "old settlers" proceeded in a separate meeting, held on the 23d August, to depose John Brown, the principal chief, and John Rogers, assistant principal chief. John Looney, the other assistant, having been won over, was placed at the head of those who punished his colleagues for the very acts in which he participated. The sentence of deposition was in the following words, viz:

"Wherefore, we, the people of the western Cherokee nation, in national council assembled, in our own name, and by the authority and in the exercise of our primary and plenary powers, do, for the causes herein set forth, remove the aforesaid John Brown and John Rogers from the office of chiefs of the western Cherokee nation; and, by the authority aforesaid, the said John Brown and John Rogers are hereby deposed and disqualified from exercising in any manner the powers and functions of the chiefs of the western Cherokee nation." For the whole of this extraordinary paper see document accompanying the report of the Commissioner of Indian Affairs, of November 25, 1839, No. 20.

Probably, not twenty *bona fide* "old settlers" participated in this monstrous act! The highest number of them ever claimed to have been pressed at the revolutionary movement was only *one hundred and fifteen*. But you will remark the important fact, that the act purports to have been done not by the *whole Cherokee people*, but by the *western Cherokees* only, showing that even at that time the eastern Cherokees did not claim a right to interfere with the *western government*. To get that government out of the way, by the apparent consent of its constituents, was deemed essential to the consolidation they sought instantly to accomplish.

Thus, through the MURDER of the *chiefs of the "treaty party,"* and the DEPOSITION of the chiefs of the "*old settlers*," by a few rebels against the legitimate authorities, backed by Ross and his foreign horde, was the path of power open to the eastern chiefs. Passing over, for the present, certain atrocious acts of the convention, sanctioning the murders which had been committed, we come to the "act of union," so called, which forms the basis of the present Cherokee government. That act is published with the Commissioner's report, already referred to, numbered 21. It appears to have been prepared as early as the 12th July, 1839, and to have been finally adopted on the 23d of August. This paper, like all the preceding, is based on the fact that there *were two communities to be united into* ONE! It then proceeds to declare such a union

and fix its terms. It is signed by the presidents and principal chiefs of the two parties and their followers, each maintaining their distinctive characters of *eastern* and *western* Cherokees.

Having thus gotten rid of the established government, and merged its constituents in the body of new comers, as far as the act of a handful of usurpers could effect such an object, the revolutionary convention proceeded, on the 6th day of September, 1839, to establish the present Cherokee constitution and government. Yes, the *government*, thus established, through murder and usurpation as foul and dark as ever stained the page of history, is that which has been and is *now* recognised by the United States *as the legitimate government of the Cherokee nation*. You will find this spurious "act of union" and this "constitution" prefacing the printed copies of the Cherokee laws; and you will look in vain through the book for any *other* acts of the two communities, merging them in *one*, or establishing a common government. To this act of union and this constitution, and to *no others*, do the Ross PARTY point as their authority for holding the western community as extinct, and its members bound to obey the new government. Can acts, thus projected and consummated, have any *legal* effect? We should consider it disrespectful seriously to ask you such a question. Notwithstanding these proceedings, the faithful "old settlers," in October, 1839, chose John Rogers, John Smith and Captain Dutch as their chiefs for the next term; and on the 11th of November, 1839, they were recognised by *Montford Stokes*, United States agent for the Cherokee nation. On that day he issued a formal notice to the Cherokees, in which he said: "As, during my agency of upwards of two years past, I have acknowledged and respected the old Cherokee chiefs and their government as the *only government of the Cherokee nation*, I shall continue to do so until otherwise instructed by the government of the United States!" [See document 347, Senate, 26th Congress, 1st session, pages 18, 19, 23, (10.)] Page 8 of the same document, we have the opinion of the War Department, formed upon a full report of all the proceedings, and sent to the Senate on the 31st March, 1840. It is expressed in the following words, viz:

"It seems to be a weak assumption which lays claim to validity in the *act of union*. There was but one party really present. Whatever pains may have been taken to enlist or to intimidate the "old settlers" into a junction with the dominant party, those who yielded to the inducements held out were few, and, with one or two exceptions, of little weight; and do not afford a decent color for the assertion that the tribe is united, or that any portion or number of them deserving to be characterized as their representatives, or whose acts could, in any proper sense, bind the "old settlers" or treaty party, assented to the proceedings of the convention of July, assembled under the auspices of their opponents, or to any other political or legislative act of the Ross party."

Might we not stop here? Every "*political or legislative act of the Ross party*," *from that day down to this*, has been done by vir-

tue of "*the proceedings*" which are here admitted not to be binding on the "old settlers"—proceedings not affording "a decent color for the assertion that the tribe is united."

It must be remembered that the United States are not a party to the Cherokee act of union or constitution. At this moment here are the Ross party presenting an act of union and a constitution, founded on murder and usurpation, (so base in their origin as not to give them "a decent color" of validity,) as the only authority by which they hold the western Cherokees in subjection; and, on the other hand, here come the western Cherokees, by one of the chiefs recognized in November, 1839, denying the authority of those acts to bind them, and reclaiming the *rights* guarantied to them by solemn treaties, of which they have been violently and wrongfully despoiled, under the usurpation above referred to. Can the United States hesitate to say to the Ross party, "if this be (as your laws show) the only authority by which you claim the reunion of the Cherokees, we must pronounce it void, as we have heretofore done, and must now consider the old government the only legitimate one, held in abeyance by domestic violence, the arm of rebellion, and the hand of power!"

We do not charge the authorities of the United States (who, be it still remembered, are not a party to this act of union) with hunting up pretexts to force it on the western Cherokees, and abandon them to their fate; yet, if this government had been in the hands of John Ross himself, its policy could not have been better shaped to give impunity to the crimes committed under his orders, or perpetuity to his usurpation. While the usurper pursued his object with a steadiness of purpose which would have done honor to a good cause, the government at Washington was feeble, vacillating, and, in its effects, unjust and fatal to those whom it was bound by every obligation of honor and good faith to shield and protect.

The murder of the Ridges and Boudinot, and the usurpation which followed, were reported to the government here—to that government which was bound, even by the treaty negotiated with these men in 1835, "to protect the Cherokee nation from domestic strife." What was its duty? DOMESTIC STRIFE had shed the blood of its friends, and overthrown the regular government. The friends of the *murdered* and the *deposed* chiefs were restrained from seeking vengeance and redress only by the assurances of the government officers that justice should be done them. The "old settlers" and treaty party little imagined that the obligation of the United States to "protect the Cherokee nation from domestic strife" would be practically construed as a contract to protect *murderers* and *usurpers!* They had a right to expect that the troops of the United States would be ordered to seize the chiefs of the Ross party, and hold them responsible for the murders of the Ridges and Boudinot, and sustain the old chiefs in the exercise of their legitimate authority. But what did they witness? *A feeble effort to arrest the murderers*, which, in a short time, was entirely abandoned, and a practical abandonment to their fate of both the "old settlers" and treaty party.

After receiving full intelligence of the murders and usurpations committed in the Cherokee country west, the Commissioner of Indian Affairs, on the 8th October, 1839, wrote to Major Armstrong, as follows: "I am instructed by the Secretary of War, that the great and liberal principle of modern times is the only one, in his opinion, by which the Cherokee nation can be made one in feeling, interest and government. That a majority shall rule, is an axiom in politics, now substantially admitted almost everywhere, and one that must prevail universally. It is applicable, and its application is as necessary to the Cherokees as to other communities. It is, therefore, recommended to the Cherokee nation of all parties to assemble in national council, and as one people to determine on such laws and regulations as the *larger* number of them shall think best calculated to insure their prosperity and happiness. To this point it must come. The minority, unless it amount to nearly an equal proportion, must eventually yield to the great mass, whether they arrange their difficulties in a *pacific* temper, or a resort be had to *violence!!!*" Again: In direct reply to the appeal of the old settlers for protection, the commissioner said: "Against the operation of such laws as a majority of the Cherokee nation may pass and enforce, the United States cannot *protect* or *defend* any portion of the tribe; so far from it, they are bound to secure the right to the nation, through the national council, of devising and executing laws. In their dissensions, therefore, concerning domestic polity, the United States cannot interfere; but against personal violence or domestic strife, without or against law, the Cherokees will be protected."—(See documents accompanying commissioner's report of November 25, 1839, No. 30.)

These positions were confirmed by a letter from the Secretary of War to General Arbuckle, dated October 12, 1839, same document. This was a decision *in favor of the Ross party and their usurpation.* It was based on the assumption that all the Cherokees were *one community;* that the "old settlers" had no separate rights; and that the Ross party, being a majority, had a right summarily to suppress the old government, and create a new one in its stead! We doubt not but you will agree with us, that this assumption was not warranted by *fact* or sustained by *principle.* The Cherokees did not pretend to be one community without a formal act of union, and the United States had themselves made two treaties with the *western chiefs*, without consulting that majority whom they now discover to be the rightful owners of the Cherokee country west.

On receipt of these instructions in the Cherokee nation, the agent, Governor Stokes, on the 20th December, 1839, united with the usurping authorities (without consulting the rightful government,) in an invitation to all the Cherokee people to meet on the 15th January, 1840, for the purpose of ascertaining the will of the majority. On the 24th of December, the old chiefs, *Rogers*, *Smith*, and *Dutch*, protested, in a letter to Governor Stokes, against this proceeding. They assumed the following grounds, viz:

"In the first place, the legal authorities of the Cherokee nation west have not been consulted, nor have they had any agency in

convening the people to decide, by vote, which government shall prevail."

"Secondly. We do not predicate the legitimacy of our government barely upon numbers; for long has the United States government acknowledged our government, and treated us as a nation! And how often has Mr. Ross, while wielding the government of the eastern Cherokees, done the same, and contended that we were distinct communities?" They concluded with a proposition that each party should choose twelve men to form an act of union, &c. —(See Senate document 347, 1st session 26th Congress, pp. 35–'6.)

The meeting called on the 15th January took place, however; and as the old settlers in general and the treaty party did not attend, the act of union and constitution adopted by the revolutionary convention were unanimously confirmed. The Ross party claim that 115 old settlers voted with them on this occasion, while HOLT, of the western nation, who was requested to count them, reported *thirty-five* present, of whom only *thirty-three* voted.—(Same document, page 45.)

General Arbuckle then informed the chiefs of the old settlers that, "agreeably to the decision of the President of the United States," he considered their government at an end. In his report to the Secretary of War, (same document, page 54,) he said: "They are greatly dissatisfied with the late decision of the government, and assured me that it was their intention to claim of the United States the undisturbed possession of *seven millions of acres of land*, which they think they were entitled to, and that all the Cherokees who *have not voluntarily removed to this country, and have refused to unite with them*, shall be removed from the lands they claim; otherwise that they shall be permitted to enjoy a *fair participation* in the government of the Cherokee nation, and receive *an equal share of the sum to be paid for the Cherokee country east*, as provided for by the 15th article of the treaty of 1835."

On the 7th February, 1840, the old settlers held a council at Fort Gibson, and adopted an exposition of their rights, concluding with the following resolutions, viz:

"*Resolved*, That the conduct of Mr. John Ross and his partisans is an unprecedented act of usurpation, unfounded in justice, law, or humanity; and we will not in all future time acknowledge the same."

"*Resolved*, That the only legitimate government of this nation is the one handed down to us by the original settlers of the Cherokee nation west, and we will, to the utmost of our power and ability, uphold and defend the same."—(Same document, pp. 55, 58.)

Let us pause here and contemplate the position in which these unhappy people were now placed. In compliance with the policy of the United States, they had given up their portion of the country east, and accepted an equal quantity of land on the Arkansas and White rivers, with a promise of a perpetual outlet west to the limits of Mexico, which, as our government then (in 1817) maintained, was the *Rio Grande del Norte*. To make room for the State of Arkansas, at the request of the United States, they agreed,

by the treaty of 1828, to retire back upon their outlet, nominally acquiring *seven* millions of acres for *four*, but in effect *curtailing their territory about six millions of acres!* In this treaty, the United States induced them to invite their eastern brothers to come and live on their lands and under their government, offering them all the privileges of citizens. Under cover of this invitation, the United States assumed the right to precipitate upon them the entire nation east, at the point of the bayonet! They were even denied the right to oppose the consummation of measures which took from them their country and aimed at their existence. Instead of uniting with them under their government, the new comers insisted on its instant destruction, and the immediate transfer of all power to their own hands. When the western chiefs refused to accede to this insolent demand, the Ross party proceeded forthwith to murder those able and intelligent chiefs, whose influence they feared; to depose the old chiefs from authority by the agency of a few rebels, and to establish an act of union and constitution, founded in blood and usurpation. When the western chiefs appealed to this government for protection, they were virtually told, the United States cannot interfere except in cases of "domestic strife!" There is no "domestic strife" among you; the bloody hand of usurpation has done its work, and you are at peace; so far from protecting *you*, we are obliged to protect the successful usurpers against any and all efforts on your part to overthrow them! This is "the great and liberal principle of modern times;" "to this point it must come!!" This was the precise position of the United States and the western Cherokees in February, 1840. The Secretary of War appears, however, to have been afterwards awakened to the injustice which the application of the "majority principle" to this case must inflict; and he resolved to change his ground, but too late to ward off the death blow to the legitimate Cherokee government.

We now approach the last act in this tragedy. To understand it clearly, we must look back to the opinions expressed by General Arbuckle in his letters to the War Department, subsequent to the meeting of the Ross party on the 15th of January, 1840, at which they re-adopted the act of union and constitution of 1839. In a letter dated January 22, 1840, he said that, in the government formed by the Ross party, "*the old settlers are not represented by a single man of their choice*," and added, "unless something is done to satisfy the old settlers at an early period, frequent violence and murders may be anticipated in the Cherokee nation."

In a letter dated January 28, he said: "If I were permitted to exercise my own judgment, I would at once dissolve both governments in that nation; and, as they cannot themselves settle this matter without great risk of serious misfortune to their people, *I would give to each party a fair representation in the new government, agreeably to their number. This, I believe, would soon give quiet to their people.*"

Again, in his letter of February 8, transmitting the proceedings of the old settlers, re-asserting their rights, he said: "I much re-

gret to notice, by them, that the troubles in the Cherokee nation have not yet ended, *provided the old settlers are to be deprived of a fair participation in the government of their nation;* and as they appear to make this the material point for which they will contend, I hope it will receive the consideration it is entitled to by the government, which will, as I judge, prevent further difficulties in this nation."

In consequence of these letters, the Secretary of War suspended the functions of the Cherokee agent, and vested General Arbuckle with the entire power to settle the Cherokee difficulties. He was directed, under date of March 7, 1840, to procure "the adoption of a constitution that will secure to every individual Cherokee his personal and political rights, and the free enjoyment of life, liberty and property;" and he was explicitly instructed to insist "*that the old settlers shall be represented in the government to be created under the provisions of the constitution to that effect; and that one-third of the chiefs shall be chosen from the western, and two-thirds from the eastern, Cherokees.*"

He was also instructed to take care that John Ross and William S. Coody should be excluded from all participation in the government—the former as *particeps criminis* in the murder of the Ridges and Boudinot, and the latter for defending those atrocities. For these papers, see H. R. doc. 188, 1st session 26th Congress, pages 43, 56, 57, and 54-'5. General Arbuckle, in pursuance of these instructions, invited delegations of both parties to Fort Gibson, and there, on the 21st of April, 1840, made them an address, in which he used the following language, viz: "The government of the United States, as you are apprized, had, some time since, determined that this contest ought to be settled by the known will of a majority of the Cherokee people, and would still desire to adhere to that decision, had it not been perceived that, by such an arrangement, *the old government or settlers would not, in a government so formed, be represented by a single individual of their own choice;* and have, therefore, decided that the old settlers *shall enjoy, in the new government, one-third of the offices, to be held by individuals of their own choice.*" * * * * * *

"The Secretary of War has regarded it necessary that Messrs. John Ross and William S. Coody shall not hold office in your nation—the former, in consequence of his public acts in this country; the latter, in consequence of opinions expressed in the presence of the honorable Secretary of War." (See Commissioner's report, 1840, page 38.) General Arbuckle drew up a constitution, in accordance with these views, to which the old settlers agreed; but the *Ross party refused to do so, upon an alleged want of authority.* The meeting broke up without effecting any thing; the Ross delegates promising to call their council, with a view to further action. As, however, they exhibited evident indications of a disposition to procrastinate and evade, Arbuckle repeatedly called their attention to the subject, and, on the 24th of May, thus concluded a letter to Joseph Vann, assistant principal chief, viz: "I expect to hear from you within a few days, that an early period may be appointed for

the assemblage of the representatives of each party, duly authorized *to establish a government for the Cherokee nation*," &c. Again, on the 2d of June, he wrote Mr. Vann, requesting "that twenty-five or thirty of the late emigrants, or their adherents, will assemble at this post on the 10th instant, for the purpose of meeting a deputation from the old settlers and those that have joined them, *for the purpose of establishing a government for the nation;* and if the emigrants are still unwilling to unite with the old settlers and their friends, it would appear that no alternative is left to settle the difficulties in the Cherokee nation, *except by the parties being separated*, and *each enjoying their own government and a suitable portion of the Cherokee lands and annuity*."

This letter brought an answer, dated June 3, in which General Arbuckle was informed "that the council has passed a resolution authorizing the appointment of twelve men as a deputation on the part of the council, to meet a deputation of those of the old settlers that have not united with the late emigrants, on the 10th instant, at Fort Gibson, agreeable to your request." In communicating these papers to the War Department, on the 9th of June, General Arbuckle said, "It will be noticed that the committee on the part of the late emigrants *is not appointed to transact the business* for which it is required to assemble at this post;" which, as we have already seen, was "*for the purpose of establishing a government for the nation*."

On the 28th of June General Arbuckle reported the result of this meeting. He said: "The emigrants first presented to the old settlers the act of union entered into last summer or fall, and the enclosed constitution, for their acceptance. This they declined to comply with. The emigrants declared that they had no authority to alter the constitution. *I therefore prevailed on the old settlers to accept it without admitting its legality until concurred in by them*, and urged the emigrants to enter into an act of union with the old settlers. These propositions were finally agreed to in the manner shown by the accompanying papers." (For these proceedings see Commissioner's report in November, 1840, pages 40 to 48.)

Those who oppose the claims of the western Cherokees plant one of their principal batteries on this act of union, quoting it to show that these unhappy people consented to their own ruin.

Now we denounce this act of union as a fraud and a nullity, of less binding effect, if possible, than that of 1839.

The War Department, after deciding that a majority of the Cherokees must govern, regardless of all pre-existing governments, had changed its ground, having become sensible of its obligation to protect the western Cherokees.

The majority had formed a constitution, and their deputation declared they had no authority to consent to any alteration. They, therefore, went to the meeting not to negotiate, but merely to receive the submission of the old settlers. The old settlers refused to surrender to the existing government, but General Arbuckle urged them to *accept the constitution "without admitting its legality until concurred in by them."* Thus were they induced to

sign the act of union which declares that "*the constitution, however, adopted at Tahlequah the 6th September*, 1839, *and the laws enacted under its provisions, shall be the governing laws of the nation.*"

Thus were they induced to adopt what they peremptorily rejected, and that constitution has been enforced upon them ever since *without being concurred in by them.*

The reason why the western Cherokees would not accept the constitution is obvious. The Secretary of War and General Arbuckle had promised them that they should have the choice *permanently* of one-third of the officers of the government, and that John Ross should be excluded from authority; whereas this constitution secured neither of those ends, but left them entirely at the mercy of the Ross party.

To obtain their assent to it, therefore, they were told that it would not be binding on their people until agreed to by them; and they vainly supposed that in giving their assent to it they could secure the promised influence and power in the government of the nation. In accordance with the act of union, the promised proportion of the offices was surrendered to some of their leading men for a fraction of the pending term, before the end of which they expected the necessary alterations would be made in the constitution. Instead thereof, they found themselves, when the fractional term expired, in the same helpless condition as before, with the aggravation that they were considered as having assented to the existing constitution, and thus cut off all hope of redress by their voluntary act. Thus one of the chief inducements to this act of union altogether failed, or rather was fraudulent from the beginning. Equally delusive were the other considerations which were held forth to secure their assent to it. They were promised from $70 to $200 each *per capita* money under the treaty of 1835 if they would sign the act, and but for that inducement their signatures would not have been procured. Messrs. Jones, Mason and Butler, appointed to investigate Cherokee affairs and report to the War Department, in 1844, inquired into the origin of this act of union, and have given the evidence with their report. (See Senate document No. 140, 28th Congress, 2d session.) The following is an extract from General Arbuckle's evidence, page 17:

"Question. What inducements or assurances, if any, were held out to the old settlers to enter into the act of union?

"Answer. I understood the inducements to be *the enjoyment at once of a just share in the government of the nation, and a participation in any per capita allowance of money due, or which might become due, from the United States*, which it was then supposed would amount to no less than seventy dollars to each individual.

"Question. If those inducements and assurances had not been held out to the old settlers, would they, in your opinion, have entered into the act of union at the time the act was agreed to by the parties?

"Answer. *I think they would not.*"

Again, page 22:

"Question. By whom was it said, or from what authority was it communicated to the old settlers, that seventy dollars (or any other sum) would be the lowest amount that would be received by them as '*per capita*' under the 'act of union?'

"Answer. *I told them myself* that, in my opinion, *the per capita money would amount to at least seventy dollars;* others thought it would amount to ninety or a hundred dollars."

At page 31, Charles Thornton, one of the western Cherokees who signed the act, but of the Ross party, states, "there was much talking among the delegation about the *per capita.* They had all formed high expectations, variously estimating it at from *one hundred to two hundred dollars.* If all had thought, as I did, that we would get nothing, *I think they would not have entered into that act in the same form in which they did agree to it.*"

It is unnecessary to inform you that not a dollar of this *per capita* has ever been paid to an old settler, or is likely to be. We do not charge General Arbuckle with international deception; but a just view of the subject would have convinced him, as it will you, that neither the Ross government nor the United States *had any rightful power to admit the old settlers to a participation in the per capita.* That was not a *public* fund, to be disposed of by the Cherokee government; but it was *private property*, belonging to the eastern Cherokees *individually.* It was a debt due by the United States to *each eastern Cherokee, a vested right which the Cherokee government could not alienate.* To such an arrangement as that contained in the act of union, each eastern Cherokee must give his individual consent to make it binding, or to justify the United States in dividing the fund among all the Cherokees, eastern and western.

In holding out this inducement, therefore, both the United States and the Ross delegation promised what they had no rightful power to perform; and, were there now a million of dollars to be divided as *per capita* money, the old settlers could not receive one dollar of it. This consideration, therefore, was not only deceptive, but fraudulent.

Of a similar character is the provision in the act of union, "that all rights and titles to public Cherokee lands, on the east or west of the river Mississippi, with all other public interests which may have vested in either branch of the Cherokee family, whether inherited from our fathers or derived from any other source, shall henceforward vest entire and unimpaired in the Cherokee nation, as constituted by this union." This was based on the assumption that the treaty of 1835 was null and void; and that the Cherokee country east was still "public Cherokee lands." In fact, such was lately, if it is not still, the position of John Ross, who *asked* for that country the sum of twenty millions of dollars! The United States deny the claim; *but here was one of their officers urging upon the western Cherokees an act which directly recognises it.*

Now we ask your serious attention to the practical results of

those proceedings. A due proportion of the officers under the constitution immediately resigned, and old settlers were appointed in their places. Their terms expired; the constitution remained unchanged; and the old settlers found themselves *in a worse condition than they were before.* They were promised at least seventy dollars each per capita money. *Not a dollar have they received.*

They were promised an interest in the Cherokee lands east. *Not a dollar's interest will they ever realize.*

They were promised the permanent selection of one-third of the officers under the Cherokee government. *Not one are they permitted to choose.*

They were promised that John Ross should be excluded from the Cherokee government. *He has become the standing chief of the nation.* Not one solitary benefit have they realized beyond the brief gratification of a few of their leaders in holding offices for a fraction of a term!

These promises were *virtually made by the United States*, by that government which now inexorably holds them to a compact, every consideration of which has notoriously failed—a government which is not a party to it, though bound by every consideration of honor and good faith to make good to the weaker party the promises of its agent, if it be still determined to force upon them this fraudulent act.

It was with some surprise that we read the opinion of the late commissioners, Messrs. Jones, Mason and Butler, "that the authority for the proceedings on either side, at Fort Gibson in June, 1840, was adequate;" and our surprise was not at all lessened by a perusal of the evidence on which that opinion was founded.

General Arbuckle, page 17 of their printed report, says: "In what manner that (the deputation) of the old settlers was appointed, *I was not aware.*" Seven of the twelve old settlers who signed the act of union were before the commissioners, who put to them the following question, page 20:

"In what manner were you appointed or authorized to act for the 'western Cherokees,' at the time you met General Arbuckle at Fort Gibson, in June, 1840, for the purpose of entering into an 'act of union,' and which you signed on the 26th of June, as seen in the original paper now before you?"

William Rogers answered: "I acted on behalf of the 'western Cherokees.'"

Thomas L. Rogers: "I came here by authority of the western Cherokees. I signed the act of union of my own accord." Page 27, in reply to another question, he said: "I was going off without signing the act, but was called by General Arbuckle, and persuaded to sign it. He further said that we must sign; that it would not be binding on us until ratified and confirmed by our people. I had no authority from my people to sign it, and did so from the representations of General Arbuckle, and the hope that it would prevent the further effusion of blood."

Ezekiel Starr replied: "I came here of my own accord. I signed

the act without having any authority to do so from my chief or people."

Charles Reese: "I had no authority from any one, but came on the invitation of General Arbuckle to a meeting for the purpose of bringing about peace between the two parties."

The Wind: "I was not authorized to come by any one; after I arrived, Mr. Andrew Vann appointed me one of the committee."

Broken Canoe: "I came without any authority, on the invitation of General Arbuckle."

Wrinkle Sides: "The same."

Question. "Were there any primary meetings of your people (western Cherokees) held previous to or after this 'act of union,' by which you had authority to come or act for the western Cherokees?"

Answered in the negative by all but William Rogers, who said, "I think there were. They were called, I suppose, to settle the difficulties between the eastern and western Cherokees."

Question. "To whom did you consider yourself responsible for the part you took in signing the act of union?"

Answers. *William Rogers:* "To myself." *Thomas L. Rogers, Ezekiel Starr, Charles Reese, The Wind,* and *Broken Canoe:* "To no one."

Wrinkle Sides: "I do not know, as I am a man of no knowledge?"

At page 31 is the answer of *Charles Thornton,* which refers back to 1839, and an imaginary deputation appointed at Tahluntusky as the source of authority, but admits that he himself was appointed on the spot to fill a vacancy. The proceedings of the old settlers in 1839, to which he refers, so far from authorizing the overthrow of their government, insisted that it should be recognized as the only legitimate government of the country.

It was these men, *appointed by nobody,* and responsible to nobody, *whose acts were never authorized or sanctioned by their people,* whom this government have deemed competent to abolish their constitution, and subject their people to a new dominion!

Nor had the Ross delegates power to form any act of union between two communities. They were not appointed for any such purpose; *they considered that object already accomplished;* and when General Arbuckle presented them a constitution, based on the position that there were two communities to be united, they refused to accept it on the ground that *they already had a constitution which they had no authority to alter.* Instead of having authority to unite the two nations, they appeared as *the representatives of the two nations already united* to receive the submission of a few individuals. Nor has that so called act of union been looked upon in any other light by the Ross party down to this day.

But there is another fatal objection to this instrument as an act of union between two Indian tribes. It purports to convey to the one tribe a title to Indian lands in the east, and to the other a title to Indian lands in the west. It also purports to be a purchase of lands by the eastern Cherokees of the western, to be paid for by

the per capita money due from the United States to the eastern Cherokees. It is in substance as much a *purchase* as if the eastern Cherokees had actually paid the western $200 a head for two-thirds of their country, or an equivalent common interest in it, which amounts to the same thing. Now, by the laws of the United States every sale of lands by one Indian tribe to another, where the United States are not a party, is *absolutely null and void.* No two tribes *can* sell lands to each other or to any one else, in any other mode than through a treaty with the United States. The eastern Cherokees now stand, so far as their right to the country is concerned, just where they did on their arrival in the country west, nor can their position be legally changed otherwise than by a treaty in which the owners of the soil, the United States and themselves, are parties.

Our positions in reference to this instrument, therefore, are—

1. That it is not an act of union merging the two nations into one, because one of the parties maintained that they had been already merged and acted throughout upon that principle.

2. That it was never authorized or ratified as an act of union by a majority or any considerable portion of the western Cherokees or Ross party, in general council or otherwise.

3. That the Ross party had no power to offer an equal share of the per capita money to the old settlers as a consideration for their country, that being a fund belonging to individuals, and held in trust for them by the United States, which the Cherokee authorities had no power to control. This consideration alone is deemed sufficient to vitiate the entire act had it been otherwise valid.

4. That the consideration of lands in the east was equally false and delusive.

5. As a purchase of lands from one Indian tribe by another, it is in direct conflict with the laws of the United States, and therefore void.

In fine, we beg your commissioners to look at the splendid country which the western Cherokees owned, and the price they have got for it under this act of union, falsely so called. What have they realized but *oppression, exile, chains, and death?* Is it not in its practical effects one of the most shocking frauds and robberies ever perpetrated by the great and powerful upon the humble and the helpless?

And why should the United States wish to enforce on the western Cherokees this act of union, though rejected by them and never recognised in that character by the Ross party? We know it has been said, that it extinguished the claim of the western Cherokees to indemnity from our government. If it did, is our country sunk so low that it would avail itself of an act *forced on these people by its own importunities*, every consideration of which was fraudulent or deceptive, *to strip them of their country as well as their government, without one dollar of compensation?* Rather than see themselves exposed to such a stain, would not our people empty their pockets, and see gold flowing from their treasury in rivers? But the United States could not, if they would, escape a claim to in-

demity by forcing on the western Cherokees this fraudulent act of union. That act, if valid, extinguishes no claim against the United States. One party had a claim upon the United States for the purchase money of their country east; the other to indemnity for the country west wrongfully wrested from them. As well may it be maintained, that the United States are absolved by that act of union from *paying the purchase money of the country east* as from *making indemnity for the country west.* The most that could be claimed is, that the act of union vested both claims in the new community formed by it, to which the United States are bound to pay both the purchase money and the indemnity. If so disposed, the United States cannot extinguish their debts by the act of its creditors uniting their claims by an instrument in which our government is not a party. It is only by *payment* that an honest debt can be extinguished; and honesty requires the payment of this debt whether the act of union be deemed valid or not. But *to whom shall it be paid?* To those *who have been robbed of their country without the least compensation?* Or to those *who enjoy that country without paying for it?*

Having purposely omitted to notice in its chronological order the treaty of 1833, between the United States and the "chiefs and headmen of *the Cherokee nation of Indians west of the Mississippi*," we now beg leave to call your special attention to that important instrument. It was not ratified, you will perceive, until the 7th day of April, 1834. Prior to that day, to wit: in June, 1833, the system of emigration, arranged between the United States and the western Cherokees by the treaty of 1828, had been put an end to by the refusal of the former longer to fulfil their treaty obligations. By this act, and the treaty ratified in 1834, the system of emigration established by the treaty of 1828 *was as effectually terminated as was that established in the treaty of* 1817 *by the convention of* 1819. No further encouragement was to be given to emigration, and each nation of Cherokees stood erect and independent within its own territories, so far as regarded their mutual relations with the United States and with each other.

On this treaty we take our stand. It has never been abrogated or altered by the parties who formed it. It has never been violated by the western Cherokees. They claim every grant, right, privilege, and power, secured and guarantied to them by that treaty, to the exclusion of every other human being, except those to whom they may have voluntarily conceded the rights of citizenship.

If, in 1819, while yet without a regular government, they could not be bound by any act of the United States and the eastern Cherokees in which they were not represented, as the government then conceded, much less could they be bound by any such act in 1835, when they had a regular government, and had *thrice* been recognised by the United States as a separate tribe, *capable of taking, holding, and disposing of separate property, as fully as any other tribe within our broad domain.*

To rebut an argument based on the supposed extension of the

Cherokee lands west by the treaties of 1828 and 1833, we beg you to take up the map of the country and identify the most northerly and most southerly points of the territory to which they were entitled under the treaty of 1817. Lines due west from those points to the western limits of the United States, will show the extent of the outlet which was promised them in 1818, and confirmed in 1821, when all hope of inducing the Cherokee nation east to emigrate to that region had been abandoned. Comparing the country included within lines thus drawn and embracing the grant of 1817, with that included within the lines of the survey actually executed under the treaty of 1833, you will see what was the practical effects of the treaties of 1828 and 1833. You will see that instead of *enlarging* their territories, those treaties but threw them back upon their outlet, *cutting off some six millions of acres upon the east, and a broad slice of their outlet on the south.* The treaty of 1833 was made necessary by the fact, that the United States, in disregard of their promises, had permitted the Creeks to settle on the Cherokee outlet, and another slice was clipped off under color of adjusting boundaries. And finally, in 1835, the remaining country of the Cherokees west was ceded to another tribe without the shadow of compensation; and, in 1838, that tribe crossed the Mississippi and took possession by conquest.

These will not be flattering pages of American history which record the conduct of our State and national governments towards the Cherokee people. Perhaps the just historian will not hold the general government responsible for the wrong suffered by the eastern Cherokees at the hands of the States in which they resided; but what can he say of its conduct thus far towards the old settlers and treaty party? Can he say less than that the United States *have used* and *abandoned* them? Our government enticed the old settlers to leave their country and remove to the west, under promises and guarantees of an ample territory, effective protection, and perpetual repose, thus possessing themselves of large tracts of the Cherokee country east in exchange for what was then considered little better than a desert. It induced the treaty party to sell the remaining Cherokee country east, and take shelter from State oppression among their brothers of the west, promising them pecuniary benefits and personal protection. But no sooner is the great object of acquiring the Cherokee lands east accomplished, than its promises to the friends who aided in the process are forgotten or disregarded. On those who thwarted its policy from the beginning and resisted it to the last, have been conferred money and power, enabling them to crush all opposition and punish the friends of the United States for their fidelity. When the old settlers, the pioneers of the west, who purchased a country with their property and defended it by their arms, cried out for relief and protection against the foreign power which the United States had thrown in upon them, strengthened with money in untold thousands to bribe the venal and arm the desperate, they were coldly told that they no longer had a country or a government, and must submit unresisting to their doom. When, by pointing to

their treaties and complaining of their hard fate, they roused a momentary sense of wrong and injustice in the bosom of the government, it only entrapped a few of their leading men into signing an instrument called an act of union, which, though unauthorized and unratified by the western Cherokee people, repudiated as an act of union by the Ross party themselves, deceptive and fraudulent on its face and totally without consideration, has been thus far inexorably enforced upon them as the seal of destruction affixed by their own hands. More fearful, if not more unjust, has been the fate of their brothers of the treaty party. In almost every neighborhood of the nation their blood cries from the ground unavenged, mingled occasionally with that of an old settler.

The history of the world does not probably furnish an example where a government, having the power of vengeance and redress, has quietly permitted the murder of its friends for no crime but serving it, as the United States have done in this case. Had all the acts of the Ridges and Boudinot in connexion with the treaty of 1835 been traitorous and wicked; had their motive been to destroy their people instead of saving them; had the law under which it is even now asserted they were put to death authorized assassination without trial, as it did not; and had it not, with the entire Cherokee government, been swept away by the laws of the States; it was still the duty of the United States if upon no other principle than that of "honor among thieves," to protect or avenge them. Surely that obligation was not weakened by the fact that their motives and those of the United States were to rescue the eastern Cherokees from that political, moral and physical degradation, under alien laws, which was hurrying them to swift destruction, and lead them to a land where they might still exist as a nation and resume the career of improvement which the interference of the States had interrupted. But they fell unavenged. Many of their compeers, under various pretexts, have met a similar fate. Bands of assassins have gone out and shot down old age and helpless boyhood in open day, and the Cherokee government have taken no steps to punish the well known murderers. To cap the climax, the government police, with its commissions in their pockets, shoot down whom they will with perfect impunity in the Cherokee country, and even dare to carry their murderous inroads into the State of Arkansas. As might be expected, private murders follow thick upon the heels of public assassination, and robbery unites with vengeance to fill the land with anarchy and crime.

In what have these horrors their real origin? We venture to say, *in the sense of wrong deeply seated in the Cherokee breast.* No party among them is free from this feeling. In many of the most impetuous of the old settlers and treaty party it has already become desperation; and in their more discreet leaders it has, for a few months past, risen almost to that pitch, "*I had rather be shot down in open fight than fear an assassin in every bush,*" is their common remark.

The first attempt towards the pacification of the Cherokees is to *do justice towards them and make them feel that they are no longer*

to be the victims of public policy. To this board the old settlers look as a new sun risen upon them, which, by the light it is to shed upon their rights and their wrongs, will bring peace to their country and security to their dwellings. They look to you, as *sworn judges*, whose *first* duty it is, regardless of politics or party, of wealth or poverty, of weakness or power, to ascertain *what are the wrongs* of the several parties, and then to *devise such means of redress as equity can arrange and justice will approve.* The western Cherokees are not insensible to the difficulties in which the United States have become involved, in their eager haste to deliver the eastern Cherokees from the ruin in which they were involved by State oppression. Their history will bear witness that so far from giving trouble to the government, they have, in all that was reasonable, submitted to its policy and relied on its justice. Although they cannot but look on the act of the government, in disposing of their country without their consent, as unjust and cruel in the highest degree, they entertain the most earnest desire again to repose in the arms of their great father, with a consciousness that they are protected by his paternal watchfulness and affectionate solicitude.

In this feeling the government has a guarantee that they will not be obstinate or unreasonable in yielding to such remedies as may, with the least possible inconvenience, enable it to make an equitable adjustment with all the parties concerned. In the sum the United States would have had to pay to emigrants from the east, had the whole nation emigrated under the eighth article of the treaty of 1828, an ample fund may be found to purchase so much of the western Cherokee country as may be wanted for the accommodation of the eastern Cherokees.

But we forbear. To your sense of justice we submit with confidence the claims of our principals, standing ready to suggest such suitable means of redress as may have occurred to us, when their rights shall have been established and their wrongs acknowledged.

With high consideration, your obedient servant,

AMOS KENDALL.

P. S. The report of General Roger Jones, Colonel R. B. Mason, and P. M. Butler, esq., commissioners appointed to inquire into Cherokee difficulties in 1844, has been presented by the counsel for the Ross party, and perhaps requires some notice at our hands.

One of us read that report in manuscript in the War Department, and, though evidently founded on a strong desire to maintain things as they are in the Cherokee country, he deemed it on the whole so decidedly favorable to the claim of the old settlers, that he procured the call made for it in the Senate, and caused it to be printed.

On page 12, those gentlemen say they "*fully agree with the complainants, [old settlers] that under the faith and solemnity of treaties, fairly and understandingly entered into in* 1817, 1819, *and* 1828 *and* 1833, *between the Unites States and the* " *Cherokee* NATION

of Indians west of the Mississippi," they held a clear and indefeasible title to the lands described in said treaties;" and that they [the commissioners] "*solemnly believe that the 'western Cherokees' are at this day, in law and equity, entitled to a reasonable pecuniary indemnity for their loss of soil and right of territory, occasioned by the vast accession of Cherokee people who last crossed the Mississippi river from the east, and who, as a whole, overwhelmed their government.*"

Here the main point of our argument is conceded in the strongest terms; and although the conclusion of the report affirms the validity of the so called act of union of 1840, *the evidence appended so completely overthrows it* that we were willing they should go to the world together.

We acknowledge that we were surprised at the gloss which this report puts upon the violent acts of the Ross party; at the lightness with which it speaks of the arrests, imprisonment, and chains often wantonly inflicted on men of the old settlers and treaty party; at the adoption of the slang of the Ross party about "a desperate gang of banditti—'half-breeds'—notorious in the nation as wanton murderers, house-burners and horse-stealers;" the standing excuse of the Ross party for becoming "wanton murderers" themselves; and especially at the opinion, so decidedly expressed, that the several parties could "live in peace in the same community." Our reason for *special* surprise in this respect was, that the gentlemen who it is presumed drew that report, and whose opinion on that point doubtless decided that of the other commissioners, had told us, severally, that in his opinion those parties *could not* live in peace in the same community, And we have the authority of the marshal of Arkansas, and of the counsel for the treaty party here present for stating, that he expressed the same opinion to them not two months after this report was sent to the War department!

How much more accurate was his *private* than his *official* opinion, is mournfully attested by the scenes which have been enacted in the Cherokee country since the first of last November, and the tales of robbery, arson, and murder which weekly reach us from that unhappy land.

———

J.

WASHINGTON, *July* 21, 1846.

SIR: We desire to correct a slight error (if error it be) in our argument in chief presented on yesterday.

We stated that the Ross party had never considered or recognised the so-called union as a real act of union between two communities, and that not a trace of it could be found on their statute book.

We had overlooked an allusion to that document in an act of the

Cherokee government, which may be found on page 64 of their printed laws, and is in the following words, viz:

"Whereas, &c., Captain John Rogers, &c., are on their way to Washington city, styling themselves representatives of the western Cherokees or "old settlers," contrary to the "act of union" entered into between the eastern and western Cherokees, and *in which the said Captain John Rogers and his adherents acquiesced on the 26th of June*, 1840; and also contrary to the constitution and laws of the Cherokee nation," &c.

This discovery enables us to confirm by positive evidence that which we affirmed on negative testimony only. The Cherokee government here treat the miscalled act of union of 1840, not as an act uniting the two communities, but simply as *the acquiescence of Captain Rogers and his adherents in an act of union executed the year before!* Thus is it proved by positive testimony that neither of the apparent parties to the act of 1840 now recognize it as an act of union, and that the United States, who was not a party to it, and but incidentally interested, now claim to consider it as a *bona fide* act of union.

On comparison of the acts of 1839 and 1840, you will perceive that they are not the same, but essentially different. The division of per capita money, forming, as has been shown, the chief consideration in the latter, is not provided for at all in the former, nor does the act of 1839 concede to the old settlers even a temporary possession of a portion of the offices.

But this is of no consequence. The main point now conclusively established is, that *the Ross party never did, and do not now deduce the union of the two communities from the act of* 1840, which was but the spider's web to entangle the old settlers, that John Ross might destroy them.

We beg leave to add, that in nothing contained in our argument yesterday, did we intend to cast any reflection upon General Arbuckle or any of those gentlemen whose public duties have brought them in direct connexion with Cherokee affairs, our object being to describe truly the general course of the government, for the purpose of making manifest the wrongs of our clients.

With high consideration, your obedient servants.

AMOS KENDALL,
Counsel for the old settlers.

To the Hon. EDMUND BURKE,
Chairman, &c., &c.

K.

If contracts, bearing the sacred name of TREATY, are considered bonds of *undoubted obligation*—if they involve the faith and honor of the government or nation who becomes a party to them—then have we established the claim of the "old settlers," formerly known, *and acknowledged wherever known*, as the "Cherokee na-

tion west of the Mississippi river," to the country west of that river, confirmed to the people of this nation by the treaty of February 14, 1833. And we do now solemnly declare our conviction, that their title to this country, when tried upon principles of *law* or *equity*, must be recognised by the government of the United States. If we are correct in our estimate of the treaty compacts under which we claim, this will be the result of the present investigation. How can it be otherwise, without perpetrating a plain and palpable violation of treaty compacts, and declaring to the world that we entertain no veneration or regard for the "public faith pledged by treaties?" The representatives of this great and glorious republic, the magnitude and grandeur of whose institutions have obtained that towering eminence, upon which they are pedestalled as a "beacon light," for the guidance of the good and virtuous throughout the universe, will not suffer its plighted faith to be violated; not even when pledged to the most powerful nation, much less when pledged to a poor tribe of Indians, whose complaints could be silenced by a single blow of its colossal arm.

The tribunal, before whom we have now the honor of appearing, has a high, responsible, and sacred duty to perform. It is composed of gentlemen occupying important places under the government of the United States, who is a party deeply interested in the judgment which may be rendered upon the various claims now submitted for their adjudication—gentlemen who bore a close affinity to the administration under whose notice and partial sanction the fatal error originated that gave existence to the wrongs of which the old western Cherokees now complain. We stand before this tribunal as the representatives of these people. And we boldly and confidently aver that they deserve not only a full measure of justice, for injuries inflicted, but the lasting gratitude of the United States, for their services rendered as the Indian vanguard of this government in the great contest which resulted in the success of the policy, originated more than a quarter of a century ago, of colonizing all the Indian tribes on the west side of the Mississippi river.

In approaching you with our closing argument in favor of the claim presented by the old western Cherokee nation, we desire to speak in that plain American language which we conceive the peculiarity of our position warrants, and which an adherence to *truth* always justifies. It is the first time since the dark and gloomy period extending from the ratification of the treaty of 1835 to the last death-struggle made in defence of their rights, by resisting the power of the usurpers in the year 1840, that they have had an opportunity of meeting their adversaries face to face, in open day, before a tribunal especially appointed to hear and decide between them, according to the provisions of existing treaties. They have always desired the appointment of a tribunal invested with this power. In making known their views to the President of the United States, recently, which will be found in a paper read on the morning of your second meeting, and filed by your secretary, they agreed to submit their claims to three commissioners, to be ap-

pointed by the President of the United States, with the consent of the Senate, two of whom should be gentlemen learned in the law; that the board thus constituted should be instructed to decide the questions involved on principles of LAW and EQUITY, and their decision should be FINAL. The delegation now here, who are fully competent to act for the "old settlers," who are the owners of the country west, under the name of the "Cherokee nation west of the Mississippi," pledged themselves in that paper to sign any compact based upon the award of such Board of Commissioners, and that it should be binding upon their *nation*, (or their party, as it is now called,) whenever ratified by the President and Senate of the United States.

We have deemed it proper to preface what we have to say in the final submission of our case into your hands, with these explanatory remarks in reference to the character of the present board, contrasted with the one recommended by the "old settlers." We consider this the more necessary, because insinuations have been thrown out by the advocates of the "Ross party," that *we* have obtained an advantage in procuring the appointment of officers of the government. We repel the charge contained in these insinuations. Our claim is against the government of the United States, and we neither expected nor desired the appointment of a board composed of officers of that government. We were ignorant of their appointment until it was officially announced. The "old settlers" agree to the appointment of Major Armstrong, the Superintendent of Indian Affairs, because they understood he had the confidence of the President and had been chosen by the "Ross party." They had equal confidence in his integrity, and believed that whatever his predilections might have been he would enter upon his duties as an impartial judge, and decide upon the law and the facts as they were presented. What had we to expect from the appointment of officers of the government, when it is known that all our attempts to obtain a hearing had been rejected during the four years of the last administration. Officers of the government, having charge of the Indian affairs of the country during that period, adopted the assumption of the ruling government in the Cherokee nation, that none but the authorities of that nation could be heard before the government of the United States. The complaints of the "old settlers," therefore, were passed over unheeded. And what did these authorities perform for the benefit of the people during that period? Why, nothing—absolutely nothing, although a delegation headed by John Ross was almost constantly at the seat of government. One thing, however, was accomplished by this delegation. It succeeded in procuring for Mr. Ross, (as chief and agent of the nation,) upwards of *half a million of dollars* on a contract which he now says was not based on treaty stipulations, nor was the money he received money of the nation; and in obtaining a promise from President Tyler, in his celebrated letter dated 20th Sept., 1841, that a new treaty should be entered into with the Cherokees, which would go to annul all former treaties, and place the destiny of the whole people under the control of this

disinterested chief and his friends. The old western Cherokees, the rightful owners of the soil, for which he intended to procure a patent by this treaty, were entirely lost sight of in the contemplated scheme, which would have been carried into effect had not Mr. Secretary Bell retired from the War Department.

The voice of the "old western Cherokees" at length reached the ears of the head of this great republic, and within the last year they were officially authorized to send their representatives to Washington, for the purpose of preferring their claims. They obeyed the summons, and these representatives were received by the chief magistrate, and obtained an assurance that their complaints would be listened to and that full justice would be rendered to them.

The tribunal before whom we now stand has been created to discharge the duty implied by this promise. We are prepared to submit our destinies to its disposal. We have frankly said, that we would have preferred the appointment of at least a majority of the board having no connexion with the government of the United States. We now, with the same frankness, say for ourselves and those we represent, that when we first heard of the appointment of the present board, it met with our cordial approbation. This feeling, it gives us great pleasure to say, prevails at this moment. We feel that we are now in the presence of a tribunal, composed of members competent in legal learning, and all the high requisite qualifications, to examine and decide upon the important and complicated questions arising out of the *tri-parté* submission of conflicting claims now brought before them for adjudication. We feel that the judges constituting this court have entered upon the discharge of their duties divested of all bias or prejudice for or against either of the parties who are suitors before it. That they will hold the scales of justice carefully and equally balanced, not only between the several Indian parties, but between them and the United States, until a patient and scrutinizing investigation will clearly establish the preponderance, by pointing to the law and the facts firmly fixed upon the platform of immutable *truth*, by one or the other of the contending parties.

Before this tribunal, therefore, we submit the claim of the old western Cherokees for a final settlement, with that cheering confidence, that the full measure of JUSTICE will be meted out to them. We believe that the positions we assumed at the outset of this investigation, and which are now on your files, have been clearly and triumphantly established by the argument which has just been made and submitted for your examination. That argument contains not one solitary assertion—contains not one single assumption, that is not fully sustained by the treaties and other public records of the government bearing upon the case at issue. In the minds of all just and impartial men, it will establish the following facts beyond doubt or controversy:

1st. That the proposed division of the old Cherokee nation, of their lands and other property held in common, was first sanctioned in January, 1809, by President Jefferson.

2d. That in the year 1817, the terms of this division was settled by solemn treaty compact, and the two parts of the nation agreed to divide their common property, and hold it separately thereafter. The eastern nation contracted that they should retain their portion of the country east, upon which they desired to commence the pursuits of agriculture and civilized life, and "begin the establishment of fixed laws and regular government." The "Arkansas emigrants," afterwards called the "Cherokee nation west of the Mississippi river," agreed to exchange the portion of the country east to which they were entitled, for a country west of the Mississippi, of equal extent, which they had already selected. This bargain was consummated, and the two divisions of the nation joined in making the cession upon the conditions agreed upon—the deed of partition by which the exact proportion of the land and other common property could be ascertained and divided between the two nations, was not to be finally executed until after taking the census in November, 1818.

3d. That in the latter part of the year 1818, the United States having failed to cause the census to be taken as promised by treaty of 1817, by which a further emigration and consequent cession of the eastern lands would be arrested; the eastern Cherokees became restive, and a delegation came to Washington, for the purpose of settling this question and closing the door forever against any further cession of their lands, on account of emigration to the Arkansas country. A treaty was entered into between this delegation, and Mr. Calhoun, Secretary of War. There was no delegation or representation from the western nation present at this treaty. It is a compact solely between the United States and eastern Cherokees, and it is there solemnly settled and agreed between the parties, that the *portion of their people who had gone to Arkansas and established a nation there, and those who had enrolled to join them, should be taken and considered the one-third of the old Cherokee nation!* That they are thus entitled to ONE-THIRD of the eastern *lands*; and ONE-THIRD of the *annuities* then due the whole nation! An estimate is then made of the probable extent of the whole country, as it existed before the cession of 1817, and an additional tract of land is ceded, which is to be taken *as the full* ONE-THIRD *of the eastern country to which the western nation was entitled!* This act of the eastern Cherokees, sanctioned by the United States, in the most emphatic manner, closes all connexion or partnership between the eastern and western Cherokees in the countries designated in the *east* and *west*, as the result of the consummation of their agreement entered into for a division of their common property by the treaty of 1817. It is shewn by the 6th article of the treaty, however, that the "Cherokees west of the Mississippi," must assent to this arrangement before it could be binding upon them. They did assent; and hence, all connexion between the eastern and western Cherokees, as *one nation*, holding their landed or other estate *in common* ceased, and thereafter they were to be considered *separate* and *independent nations*.

4th. That the treaty of 1828 was negotiated between the Uni-

ted States and the "Cherokee nation west of the Mississippi." The eastern Cherokees had nothing to do with this treaty. They did not pretend to have any interest in the bargain about to be concluded between the parties to it. And yet, the important contract was here entered into by which the "western Cherokees" ceded away the country they had obtained from the United States, in payment for *their share of the country east*, under the partition made by the treaties of 1817–'19! And for the lands thus ceded they received in payment, not money, but another country, further west, which they agreed to accept in exchange, and which was to be secured to them as a permanent home, with a *fee simple* title.

5th. That the treaty of 1833, which permanently established the boundary lines of the country conveyed to the western Cherokees by the treaty of 1828, was concluded with the "Cherokee nation west of the Mississippi," and is signed by the principal and two assistant chiefs, constituting the Executive, and the two presidents of the committee and council, which constituted the legislative branches of the western Cherokee government. The council called to settle the boundary lines with the United States commissioners and the chiefs of the Cherokee and Creek nations, met at Fort Gibson on the 29th of January, 1833, and continued their sessions until the 14th day of the next month, (February,) where treaties were concluded with both nations. During all this time there appeared no representative from the nation east to take care of the interests of that nation, because no such interests were then claimed; but on the other hand, they were utterly and entirely disclaimed by the eastern Cherokees. The treaty entered into between the United States and the Cherokees, which settles the boundary lines of their country, and guaranties a patent with a *fee simple* title, is shown to be the last treaty entered into between the United States and the Indian party to it, who are called in its caption "the chiefs and head men of the Cherokee nation of Indians *west of the Mississippi.*" It is signed by the constituted authorities of the nation, to whom it confirms, *exclusively*, the title to the country!! This treaty being only concluded on the 14th February, did not reach Washington in time for ratification by the Senate that session, Congress having adjourned on the 3d of March. It was not, therefore, ratified until the 12th of April, 1834, and during that long period no opposition was made to, or interest manifested in, its ratification by the *eastern Cherokees.* This treaty, then, as has been clearly shown, is the only *existing contract under which any title to the country it describes can be legally claimed!*

6th. That the treaty of 1835 was an arrangement between the United States and the eastern Cherokees, with which the western Cherokees had nothing more to do than had the eastern Cherokees with *their* treaties, entered into in 1828 and 1833. Under this treaty, it has been shown, the eastern Cherokees removed upon the lands of the western Cherokees, overthrew their government, and took possession of their country, without their consent, and in opposition to their violent protest; notwithstanding there existed a *general warranty of title to that country, made to the latter by the*

United States by the first article of the treaty of 1833, for which country they had paid full value.

7th. That the so-called "acts of union" of 1839 and 1840, which are really intended as treaties of *sale* and *purchase* between the parties, are shown to be null and void; first, because they are fraudulent upon their face, for the reason that not one single consideration offered by the eastern to the western Cherokees *could* be complied with. Secondly, because the only existing law of the United States, under which the title of lands owned and occupied by Indians can be extinguished, requires that it shall be done by "treaty or conventions entered into pursuant to the constitution." Thirdly, because the parties who entered into that contract possessed no authority to do so. And, lastly, if neither of these objections were tenable, the contract, implied by either act of union, has entirely failed for want of consideration. Upon the subject of this "act of union," and the constitution based upon it, we reserve something more to be said when we reply to that part of the argument of the advocate of the Ross party, which brings it into notice with such a triumphant flourish of trumpets.

We have expressed our conviction that the claim of the "old settlers," under the name of the "Cherokee nation of Indians west of the Mississippi river," to the entire country secured to them by the binding compact of 1833, has been clearly established by the argument read this morning, and that nothing more need be said upon the subject in support of that claim. But it is due to the gentleman who appears as the counsel for the Ross or "government" party to notice the argument which he has submitted, in which he has undertaken to show that the western Cherokees never were a *nation*, and never owned or occupied a country west of the Mississippi, except as the "pioneers" or stewards, sent there by the eastern nation to take care of their interests. It might be considered discourteous and unkind in us to pass over his flights of imagination, *which never had a resting place in any written or printed volume*, without a passing notice. We will, therefore, endeavor to do him full, ample and complete justice.

In undertaking this pleasing duty we must be permitted to say that his distinguished client, the great "embodiment" of the Cherokee nation, must have kept him in profound ignorance of the movements of the eastern Cherokees in contradistinction to the western Cherokees, for more than a quarter of a century before he was installed into the often occupied place of *counsellor for the Cherokee nation, under the dominion of Mr. John Ross.* He must also have been kept in ignorance of the fact, that several of the most distinguished lawyers of the country have been employed and paid enormous fees out of the money of the eastern Cherokees, to prove that they WERE *a separate nation from the western Cherokees ever after the treaty of* 1817, and that *the interests of the one nation could not be compromitted by the acts of the other.* We say that he must either have been kept in profound ignorance upon these points himself, or else he must suppose that he has to deal with men who do not understand what they are about, or who can be lulled to

sleep by the power of his eloquence, or silenced by the affectionate offer he made to lend us a helping hand to obtain a few thousands from the treasury of the United States, upon condition that we would remain quiet and not interfere with the claims in his hands, which, if left to his especial management, would fill the coffers of the Cherokee nation and enure to the benefit of the whole Cherokee people, the "old settlers" included.

We will now tell that gentleman, here, before we proceed further—and we ask this honorable court and all present to listen—that we desire to procure nothing more from the United States, or from any other source, than we are justly entitled to *under the provisions of our treaties.* We regard these treaties as sacred obligations, which the western Cherokee nation have faithfully complied with on their part. All they ask is that the government of the United States shall do the same. They do not come here to *repudiate* and *denounce* a treaty, and then ask to *be paid a large amount of mon y under its provisions!* They come here to uphold and preserve *their* treaties, and ask for their fulfilment! But they desire to receive no money under any treaty at the expense of the *violation of its plain conditions*, as was offered to them by the gentleman on the other side, in tendering a portion of the *per capita* money which may be saved from the wreck of the treaty of 1835!

We have said that our claim to the country west of the Mississippi has been clearly established by the mass of documentary testimony brought before the honorable board, and enforced by the argument which has been read this morning. Upon the proofs there adduced we might rest our case with perfect safety. The advocate of the government party, however, has broadly asserted that the country west of the Mississippi was secured to *the whole Cherokee nation, east and west, by the provisions of the treaties of* 1817, 1819, 1828, 1833, *and* 1835. That the nation never was divided, but that those who went to the west under the stipulations of the three first of these treaties could only be looked upon as "pioneers" sent by the eastern nation to take care of their interests in that region, until they were ready to go and take possession. We charge the gentleman with making assertions not warranted by the treaties, and which cannot be sustained by a tittle of evidence to be found in the records of the country. We charge those he represents with giving countenance to these assertions, which they know to be unfounded, and directly at variance with all the previous declarations of themselves and their counsel, and from their own acts, and "out of their own mouths" will we convict them of the charge. To the performance of that duty we will now proceed. In the first place we beg leave to refer the honorable board to the second volume of "American State Papers," containing executive and legislative documents from the 1st session of the 14th to the 2d session of the 19th Congress. This document has been cited in the argument read this morning, and contains a mass of evidence which overwhelms and annihilates every vestige of the argument set up by our opponents, that they held any claim in the country west of the Mississippi, under the treaties of 1817 and

1819, or that the old Cherokee nation was not divided and made two separate and distinct nations by the provisions of those treaties. The one called the "Cherokee nation east of the Mississippi," and the other called the "Cherokee nation west of the Mississippi river."

The next *witness* which we shall introduce to overthrow the fabric now erected by the counsel for the "eastern Cherokees," is the argument and opinion of the Hon. Wm. Wirt, *who was employed by John Ross and his nation, to contest the claims of Georgia to the improvements and lands abandoned by Cherokees who emigrated west under the treaties of* 1817, '19, *and* '28; *and to show by his towering ability that the Cherokee nation east and the Cherokee nation west were distinct and separate nations; the one in nowise being responsible for the acts of the other.* This important argument, furnished us by the Ross party, will be found in a small printed volume, and is dated June 21, 1830. *It is to us now a valuable document.*

In illustration of the controverted points there submitted, Mr. Wirt goes into a learned and laborious examination of an Indian title to lands, and of the only constitutional mode of extinguishing that title. He brings into view the several articles of the treaties of 1817, '19 and '28, and sustains the cause of his clients, *the eastern Cherokees*, by giving his deliberate opinion in their favor, which he enforces in an argument of great length and power. He utterly denies and repudiates the idea that the eastern and western Cherokees were *one nation* after the treaty of 1817, or that the interests of the one nation could be affected by the acts of the other. We will quote from the printed opinion before us, which we submit for the inspection of the honorable board, and we will quote fairly his own words. In closing his statement of the points submitted for his opinion, found in the treaty of 1819, he says:

"By the 6th article of the treaty, it was stipulated that the annuity due to the Cherokee nation should be paid, two-thirds to the Cherokees east of the Mississippi, and one-third to the Cherokees west of that river; and if the Cherokees west of that river should object to that distribution within a given term, the census originally contemplated was still to be taken with reference to that object alone.

"This is the last treaty between the United States and the Cherokee nation to which the Cherokees east of the Mississippi were parties.

"On the 6th of May, 1828, a treaty was made between the United States and *the Cherokee nation west of the Mississippi, to which the Cherokees east of the Mississippi were not parties*, the object of which was to remove the *Arkansas* Cherokees farther westward, and to give them lands beyond the territory or State of Arkansas, in exchange for those they were about to evacuate on the Arkansas. In this treaty the following article occurs:"

[He here copies the whole of the 8th article of that treaty, and comments upon it as follows:]

"This treaty was never submitted to the *Cherokees east of the*

Mississippi for their ratification or approval, and never in any mode received the sanction of *that nation*. But it is also stated that, *subsequent* to its ratification by the Arkansas Indians, several of the individuals east of the Mississippi have removed from their territory lying within the chartered limits of Georgia, leaving improvements on the lands which they had occupied in their territory, which improvements have been valued by persons appointed by the United States, and have been paid for, or are to be paid for, by the United States.

"It is further stated that, according to the laws and usages of the Cherokee nation, no individual holds separate property in the lands; but the whole of the land belongs to the nation, *as a nation*, and the title can be granted only by the whole nation in their national character.

"It is further stated that, by the same laws and usages, when an individual of that nation wishes to appropriate any portion of their lands to his exclusive use, he may do so by erecting improvements thereon, and that he acquires, thereby, the exclusive right of occupancy in the lands within a quarter of a mile of his improvements on every side. By these laws and usages he may sell the right thus acquired to *any one of the Cherokee nation*, but to no other. If he abandons them for twelve months without such a disposition, the improvements belong to the nation, or to the next occupant of that nation.

"On this case I am asked the following QUESTIONS:

"1. Has the State of Georgia any and what rights to the improvements, *or the lands* therewith connected, in right of occupancy, which had been evacuated by individuals of the Cherokee nation under the last clause of the 7th article of the treaty of the 8th of July, 1817, and which had been rented by the agent of the United States as aforesaid, but the leases on which had been made void by the 5th article of the treaty of 27th February, 1819—these improvements and lands lying within the territory reserved by the Cherokees under the latter treaty?

"2. Has the State of Georgia any and what right to the improvements, and the lands therewith connected, by occupancy, lying within the Cherokee nation *east of the Mississippi*, which were evacuated by individuals of the nation, under and in consequence of the invitation held out to them by the 8th article of the treaty of the 6th May, 1828, between the United States and the Cherokees *west of the Mississippi*?"

In answer to the above questions, Mr. Wirt then gives his opinion adverse to the State of Georgia; and in the course of his argument in defence of this opinion, he fully sustains the position now and always assumed by the old settlers; and for this triumphant argument in our favor he was paid by Mr. Ross and his eastern nation, who then repudiated all connexion with the western Cherokees, but who have now employed learned counsel to prove that all that was then said was mere *bagatelle*, intended to hoodwink the United States and quiet the claims of Georgia. Let us, however, hear Mr. Wirt, as counsel for Mr. Ross's eastern Cherokees,

in his own impressive language, in support of his opinion referred to. We will read from his printed argument, commencing on page 15, which contains the following words:

"The Cherokee nation had divided. A part of them had already gone to the Arkansas, under the commission of the President in 1809, and others were disposed to follow them. How many would follow them was, at the date of this treaty, uncertain. The plan was to give to the emigrants lands on the Arkansas, in exchange for their proportion of the territory east of the Mississippi, which proportion was to be fixed by their relative numbers; but as these numbers could not be ascertained without a census, which the third article proposes, it was unknown at the date of the treaty what proportion of their lands the Cherokees would, finally, have to surrender, and, consequently, what quantity the United States would have to cede on the Arkansas, which was to be, in the language of the treaty, *acre for acre*.

"Hence the treaty of 1817 does not propose, of itself, to accomplish all the objects which the parties had in view; it was merely a *partial* engagement for the *present*, avowedly looking to ulterior and final arrangements, when the proportion should be ascertained; and the ultimate time fixed for this ascertainment, by the 3d article, was the month of June, 1818.

"In the meantime the United States take, by the 1st and 2d articles of this treaty, a present cession by metes and bounds, *in part* of that proportion; and they give in exchange, by the 5th article, lands on the Arkansas, of which the lower and side lines only were fixed, the western boundary being left open in order that the lands might run up between the Arkansas and White rivers, *for quantity*, whenever that quantity should be ascertained by the census.

"The probability, nay, the certainty was that this census, when taken, would call for a further cession from the Cherokees; hence the language of the 4th article—the *lands* were 'to be apportioned and *surrendered* to the United States, agreeably to the aforesaid enumeration.' This word '*surrendered*,' here applied to the *cession of lands*, demands attention. It occurs again in the 8th article; 'and to each and every head of any Indian family residing on the east side of the Mississippi river, *on the lands* that are now or may hereafter be *surrendered* to the United States,' &c. Now, with regard to that part of the *improvements* which stood on lands which had been already surrendered to the United States by the 1st and 2d articles of the treaty of 1817, they belonged, of course, to the United States, and it was unnecessary to say more of them than that the United States should pay for them. But with regard to those improvements which stood within the Indian boundary, and which had not yet been *surrendered* to the United States by the treaty of 1817, in exchange for lands on the Arkansas, *they were left in a state of suspense* as to the ultimate title. Why? Manifestly because it was yet uncertain where the line of ultimate cession by the Cherokee nation would run, and on which side of that line these improvements would fall; and because it was clear that they would belong to whichsoever of the parties the land on which

they stood should be finally *surrendered* by that *ultimate* cession. This is the manifest meaning of these words applied to these improvements, '*until* they should be *surrendered* by the nation or to the nation;' for they would be *surrendered by* them or *to* them, by the *surrender by* or *to* them of the lands on which they stood. And while this is, to my own mind, a perfectly satisfactory reason for keeping the *ultimate title* to these improvements *in suspense*, I am incapable of conceiving any other to which common candor can give its assent.

"In this state of things came the treaty of 1819, which is declared on its face to be *a final adjustment of the treaty of* 1817. By this treaty, the proposed census is waived by mutual consent, and the United States accept from the Cherokees a new cession of lands, by metes and bounds, (represented by the officers of the United States as amounting to 738,560 acres,) which is declared to be *in full satisfaction of all claims* which the United States have on that nation on account of the cession on Arkansas. By the 8th article it is agreed that the boundary line, designated by the first article, shall be run by the commissioners to be mutually appointed by the parties, "*and that the bases which have been made under the treaty of the 8th July*, 1817, *of land lying within the portion of country reserved to the Cherokees to be void.*" Here is the *surrender to the nation* contemplated by the treaty of 1817. For the running of the line of this new cession would ascertain on which side of it the *improvements* would lie, and the lands *surrendered* to the Cherokees by that line would carry with it the *surrender of the improvements* which stood upon them. The uncertainty as to this line existing at the date of the treaty of 1817, which alone had been the cause that kept the *ultimate title* to these improvements *in suspense*, would be at an end, and the cause ceasing the effect would cease with it. For why declare these leases void if they might be immediately renewed? What conceivable motive could there be for declaring them void, except to disclaim *any continuing authority* in the United States to *renew* them? Of what possible service could their vacation be, either to the Cherokees or to the United States, if they might be reinstated by the United States the next instant?

"And again, upon this supposition, how could this treaty be a *final adjustment* of all claims under the treaty of 1817? How could the United States relinquish *all claims* on the Cherokees in consequence of this new cession, if they had still a claim to enter upon the lands thus solemnly reserved to the Cherokees, and continue to lease out their lands? It must, I think, be manifest to every impartial inquirer, that this is a clear *surrender* to *the nation* of all the improvements which should be found to lie within the lands reserved to them.

"This conclusion is, again, fortified by a further consideration arising from the treaty of 1817. The United States were to continue to rent out these improvements until they should be *surrendered by the nation or to the nation.* Is there anything in the treaty of 1819 which looks like a surrender *by the nation to the United States*

of the *improvements within the reserved lands?* Not one syllable. And yet, this treaty of 1819 is solemnly declared to be a *final adjustment* of *all* claims under the treaty of 1817. Could it be a *final adjustment* if it still left the title to these improvements *in the suspense in which they were placed* by the treaty of 1817? But, if it were possible for human reason to answer this question in the affirmative, all that would be gained by it would be to continue that state of suspense; and it has been already shown that in that condition the State of Georgia had acquired no title to the possession of the lands; because there had been no *extinguishment* of the Indian title in the universally received sense of such an extinguishment.

"To me, it is perfectly clear that the treaty of 1819 is a *surrender to the nation* of all the improvements within their boundaries, as established by that treaty; and, according to the express language of the 7th article of the treaty of 1817, 'the Cherokee nation are not to be called upon for any part of the consideration paid for said improvements at any future period.'"

"It is true that the concluding stipulation of the 5th article of the treaty of 1819, 'that all *white people* who have intruded, or may hereafter intrude, on the lands reserved for the Cherokees, shall be removed by the United States,' has nothing to do with this question; not because the lessees of these improvements under the United States or the State of Georgia, by the treaty of 1817, cannot be regarded as *intruders*, (*though in truth, if they were white persons, they were intruders; because they were there without title,*) but because, under that treaty, *white people* cannot be lessees of these improvements; the power being expressly confined to renting them '*to the Indians.*' And since the power is derived solely from the treaty, it can be executed only according to the treaty. The provision, with regard to the removal of intruders, relates to a totally distinct subject, and is only the repetition of an engagement found in all the old treaties, as well as the new, and provided for by the act of 30th March, 1802, 'to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers,' to which this provision of the 5th article of the treaty of 1819 expressly refers. It is blending subjects of a different nature, which only tends to confound, to bring the provision with regard to *white intruders* to bear upon this question of renting improvements to the *Indians* themselves. Upon the whole, if the determination be formed to take away their land from these people, *per fas aut nefas*, all reasoning upon the subject becomes folly and mockery. But if the object be ascertained fairly and candidly the rights of the parties, and to claim only those rights, I think it will be manifest to every disinterested inquirer, that, whether considered under the treaty of 1817 or that of 1819, the *State of Georgia* has no right, either to lands or improvements within the territory reserved to the Indians by the latter treaty."

It is pleasant pastime to fight an enemy with his own weapons; and it is good policy to do so, when we can find the weapon of an enemy so admirably suited for the *home thrust* as the one now fur-

nished by our adversary on the other side. The argument of William Wirt, accompanying his deliberate *opinion*, on any legal or constitutional question, must have weight everywhere; but with his admiring friends on the other side *his opinion* should be held *omnipotent*, and silence all opposition. Mr. Wirt gave this opinion, too, at the *instance* and *heavy expense* of Mr. John Ross's Cherokee nation. We have quoted sufficient to scatter to the winds all the fine net-work and bold assertion of the *present counsel for the Ross party*, in forcing constructions upon the provisions of the treaties of 1817–'19.

Let us now hear Mr. Wirt's construction of the treaty of 1828. Here it is, *page* 18, *et seq.*, *same volume:*

"2. The second question arises under the 8th article of the treaty of 1828. This is a treaty between the United States and the *Arkansas Cherokees. The Cherokees east of the Mississippi are not parties to it.* This nation, originally one, had separated, as we have seen, by mutual consent in 1808–'9; one part wishing to continue the *hunter state* and to go west in quest of game—the other part '*to engage in the pursuits of agriculture and civilized life, in the country they then occupied.*' This separation had been sanctioned and promoted by the President in 1809, and has been solemnly ratified by the treaties of 1817 and 1819. The two parts of these people thus became separate and distinct tribes and nations; as much so as if they had been distinguished by different names. Now, the treaty of 1828 is, upon its face, expressly a treaty between the United States and 'the Cherokee nation of Indians *west of the Mississippi.*' The object of the treaty was to induce these people to make another removal from their settlements on the Arkansas, and to take in exchange a grant of lands beyond the limits of the United States territory of Arkansas. With this subject the Cherokees *east of the Mississippi* had nothing to do; and the nation to the west has no more right to interfere with *their* lands than *they* had to interfere with the lands of their brethren on the Arkansas. But in this treaty there occurs an article (the 8th) in which the western Cherokees are made to present a plausible picture of the great advantages they were *about* to reap from this their *second migration*; and then it is added, 'that their brothers yet remaining in the States may be induced to join them, and *enjoy the repose* and *blessings of such a state in the future*, it is further agreed on the part of the United States, that to each head of a Cherokee family now residing within the chartered limits of Georgia, or either of the States east of the Mississippi, who may desire to remove west, shall be given, on enrolling himself for emigration, a good rifle, a blanket and kettle, and five pounds of tobacco, (and to each member of his family one blanket;) also, a just compensation *for the property he may abandon*, to be assessed by persons to be appointed by the President of the United States.' Other facilities for emigration are then added, and finally a premium of fifty dollars for each person or head of a family he may take along with him, *provided he and they shall have emigrated from within the chartered limits of Georgia*, and the opinion is maintained that

by force of this article the United States acquired, by purchase, for the use of Georgia, all the lands and improvements which the emigrants from the east had there abandoned, under the inducements held out by this article.

"1. Now the first reflection which presents itself on reading this article is that it does not import a *purchase* at all. A series of inducements is held out to the individual Cherokees who reside east of the Mississippi to emigrate beyond the territory of Arkansas. The allurement of that residence is first held out to them—premiums of specific property and money are added to these inducements—and, to overcome their natural reluctance to leave behind them the possessions they then enjoyed to the east of the Mississippi, they are assured that they shall suffer no loss on that account, but that the United States will pay them a just compensation for the property *they may abandon;* not for the property they may *sell and convey* to the United States, nor even that '*they may abandon to the United States*, (which, by the way, would have been a very curious form of expression,) but 'for all the property *they may abandon;*' that is, that they may have *derelict* within the eastern nation. The *terms* are by no means *appropriate* to the contract of sale. It is not conceivable that they are the terms which would have been selected, if a *sale and purchase* had been within the contemplation of the parties. There would have been some provision authorizing the United States to take possession of the property so left under a contract of purchase; some provision authorizing them either to occupy or, at least, to rent the property to the Indians, for the use of the poor and decrepit of their nation. But there is nothing which affords the slightest indication that the United States considered themselves as acquiring the property so to be abandoned. The event is contemplated of its being left by the emigrant Indians, and in that condition it is viewed and treated, and called property abandoned.

"2. But suppose it to be a sale to the United States—*of what* is it a sale?—of *the property* which the emigrants should leave behind them? *What property could* they leave behind them, which was in its nature capable of alienation to *any one not a member of the Indian nation?* Their personal property only; that is, their horses, cattle, stock, agricultural implements, &c. For, *as to the lands* which they had occupied, *these* belonged to the *whole nation as a nation*, and were incapable of *individual alienation* to any one, *except a member of that nation.* The emigrant could sell only the title he held; and, according to the opinion of the Supreme Court of the United States, (in the case of Johnson and McIntosh, 8th Wheaton, 593,) the character of individual title to lands within the Cherokee nation is governed exclusively by their own laws and usages. But according to their laws and usages, there is *no individual property in lands.* The Indian who builds improvements on a piece of land acquires the exclusive right *to use the lands* for one quarter of a mile around his improvements, so long as he shall choose to occupy them. If he wishes to leave them he may *sell* his improvements and right of occupancy *to one of his own nation*,

but to no one else. If he *abandons them for twelve months* without such a sale, *the title reverts to the whole nation.*

"If, therefore, the 8th article did contemplate a *sale* to the United States *of the property which* the emigrant should *abandon*, (which it is quite apparent they did not,) the *sale* could only be of *such property as was alienable to persons not of the nation*, and, consequently, did not include *lands and improvements which were not so alienable.* Nor does it vary the result that the United States is the supposed purchaser. For, in the first place, the United States cannot alter the laws of the Cherokee nation, except so far as they are authorized so to do by treaty. In the next place, even if the United States could alter those laws, it could be done only by an act of Congress, which is not pretended. It surely could not be done by the President and Senate, in the form of a treaty, and that, too, a treaty made with another nation. So long as the Cherokees remain a *sovereign nation*, under the exclusive government of their own laws, (which I have shown, in another opinion, that they are, and have a right to be,) their title to their lands cannot be *extinguished*, except by their own treaties, made by them *as a nation*, or by individuals of their nation, authorized so to do by their own laws.

"It is understood, as being objected to this conclusion that, according to the process of reasoning which has led to it, *if a majority of the Cherokee nation should withdraw, and receive compensation for their respective claims, the remnant, however small, would extend their title of occupancy over all the lands lying within the limits originally allotted to the whole, which, it is said since the year* 1808, *seem not to have been the understanding, either of this government or of the particular tribe whose rights are involved in this inquiry;* and the treaties of 1817 and 1819 are cited in proof of this understanding, as well as of the policy by which the United States have encouraged the emigration of this tribe. To which I answer, that the case arising under the 8th article of the treaty of 1828 does not at all fall within the *policy* which has prevailed since the year 1808, and which is illustrated by the treaties of 1817 and 1819. It is manifest, indeed, that the policy has been to encourage the emigration of this tribe; but the means heretofore used to encourage it have been perfectly legitimate, and in strict consonance with all the rights claimed for the Indians. The treaties of 1817 and 1819 were not treaties as contracts with *individuals* of the Cherokee nation. They were treaties with the *whole* nation for the benefit of *the entire nation.* The *cessions* made by those treaties were *regular cessions by the whole nation in its sovereign capacity*, and the compensation received was a compensation to the nation. This was all fair and proper, and perfectly consistent with the constitution, laws, and political sovereignty asserted for the Cherokee nation. But there never has been an understanding since the year 1808, nor at any other time, that the sovereign right *of the nation over their lands could be extinguished by private purchases from the individuals of the nation.* With regard to the case put, of a majority of the nation withdrawing and *receiving a com-*

pensation for their property, and the remaining remnant asserting a title to all the lands lying within the limits originally allotted to the whole tribe, it represents no kind of difficulty; for the question still is, whether the title belongs to the *whole nation collectively in their national capacity*, or to the *individual* capacity. If to the former, as it unquestionably does, then, however much the nation may be reduced, either by death or emigration, those who remain will still compose *the nation*, and hold all the national rights. For the rights of a sovereign nation do not depend on the numbers of its people. So long as they continue to be a sovereign nation, all the rights of the nation remain entire. Nor has there ever been an understanding or a policy since 1808, or at any other time, nor do the treaties of 1817 and 1819 illustrate any such policy or understanding, that the United States can extinguish the title of this nation to their lands *piecemeal*, by contracts made *with individuals of the nation, without the concurrence of the nation itself*, The treaties of 1817 and 1819, I repeat it, were the acts of the entire nation, and afford neither precedent nor principle for the implied contract *with individuals of the eastern nation*, under an article contained in *a treaty with the nation west of the Mississippi*.

"Upon the whole, I am of the opinion that the claim of Georgia to an acquisition of lands in the territory of the nation east of the Mississippi, by the 8th article of the treaty of 1828, with the *Cherokees on the Arkansas*, is as totally destitute of foundation as the claim under the first question.

WILLIAM WIRT.

"BALTIMORE, *June* 21, 1830."

Will the counsel on the other side now suffer a *nonsuit* on the claims he has set up for the country west of the Mississippi, under the treaties of 1817, 1819, and 1828? Will he acknowledge his error in asserting before this board that the Cherokees east of the Mississippi always claimed to be the entire Cherokee nation; that there was not two nations; and that the old nation east of the Mississippi have asserted their right to the country west ever since the treaty of 1817? If he does not, then we can only say he must entertain a strange opinion of his present client, and proceed with our exposition, which must "condemn him" from the "words of his own mouth."

In the year 1821, we find John Ross acting as president of the national committee, which passed the following resolution:

"NEW TOWN, *October* 27, 1821.

"*Resolved by the national committee and council*, That any person or persons whatsoever who shall choose to emigrate to the Arkansas country, and shall sell the improvements he or they may be in possession of to any person or persons whatsoever, he or they so disposing of their improvements shall forfeit and pay unto the Cherokee nation the sum of one hundred and fifty dollars: *And be it further resolved*, That any person or persons whatsoever

who shall purchase any improvement from person or persons so emigrating, he or they so offending shall also forfeit and pay a fine of one hundred and fifty dollars to the nation, to be collected by the marshal of the district.

"By order of the national committee.

"J. ROSS,
"*President national committee.*

his
"Approved: "PATH + KILLER.
mark.

"A. McCoy,
"*Clerk national committee.*"

Every act of the Cherokee nation after the treaty of 1819, shows that they considered that treaty a final adjustment of their territorial rights and limits, and they resolutely opposed any further cession of their lands, and further emigration from their nation to the country west of the Mississippi, in which they declared they had no interest. In the year 1822, they were informed that a commission was to be appointed by the government of the United States, with the view of holding a treaty with them for the purpose of extinguishing the title to their lands within the chartered limits of Georgia. The head chiefs instructed their district judges to ascertain the sentiments of their people upon the subject, and the following is the result:

"New Town,
"*Cherokee nation, October* 23, 1822.

"*In committee and council:*

"Whereas, it appears in the prints of the public newspapers that, in consequence of the earnest solicitations of the governor and legislature of the State of Georgia, the Congress of the United States did appropriate a sum of money last session, with a view of holding a treaty with the Cherokees for the purpose of extinguishing their title to lands within the chartered limits, claimed by the State of Georgia; and it also appearing in the public prints that the President of the United States has appointed commissioners in conformity to the views of said appropriation, and anticipating a call by the commissioners, the head chiefs of the Cherokee nation requested the judges to ascertain the sentiments and disposition of the citizens of their respective districts on the subject, and to report the same to them, which reports having been accordingly made and now laid before the national committee and council, declaring *unanimously* with one voice and determination to hold no treaties with any commissioners of the United States to make any cession of lands, being resolved not to dispose of even one foot of ground—

"*Be it therefore known and remembered*, That we, the under-

signed members of the national committee and council, after maturely deliberating on the subject:

"*Resolved by the national committee and members of council*, That the chiefs of the Cherokee nation will not meet any commissioners of the United States, to hold a treaty with them on the subject of making cession of lands, the property of the Cherokee nation, as we are determined hereafter never to make any cession of lands, having not more than sufficient for our nation and prosperity.

* * * * * * * *

"By order of the national committee.

"JOHN ROSS,
"*President national committee.*

"Approved:

his
"PATH + KILLER.
mark.
"CH. R. HICKS."

Senate document 512, 1st session 23d Congress, numbered on the back of the volume "22" and "9," and designated in the title page "Correspondence on the subject of the emigration of Indians, between the 30th November, 1831, and 27th December, 1833. Vol. 3."

We will call the attention of the honorable commissioners to the contents of this interesting volume, by referring first to the letter of JOHN JOLLY, principal chief of the western Cherokee nation, addressed to the President of the United States, and dated December 1, 1831, communicating the proceedings of a council of his people, which adjourned on the 6th of the preceding month. This letter will be found on pages 4 and 5 of the document above cited, and we refer to it as the foundation of the official action had between both nations of Cherokees and the United States, in relation to *emigration from the east to the west under the treaty of* 1828. The old chief commences by informing the President that the council of the nation had authorized him, as principal chief, to appoint a delegation "for the purpose" (using his own language)"of sending them to Washington city, with such instructions as I may think best for my nation, now residing on Arkansas, and for such of their brethren as may hereafter join them from the *old nation*." He then announces the names of the delegates, and communicates his instructions, the first and second clauses of which read as follows:

"1st. My instructions to the delegation are, that they shall endeavor to have secured to *this nation* that portion of the annuity which shall hereafter be sent and paid to *this nation*, according to the proportion of emigrants which have arrived here since the last treaty, or that may arrive by the commencement of each year hereafter."

"2d. The delegation are instructed to make such arrangements with the government, as will secure to *this nation* a proportion of any advantages which may hereafter accrue to the old nation, ac-

cording to the number of emigrants which have been received at *this nation* since the treaty of 1828."

The fifth and last clause of these instructions are in the following words:

"5th. The delegation are authorized to act, in all things of interest to *this nation*, as they may think best, in making and signing treaties, and the same will be binding upon the nation, unless the same should extend to *selling or exchanging land, or altering the lines of* THIS NATION, *specified by the treaty of* 1828, *all of which is expressly forbidden.*"

The authenticity of this letter is sufficiently vouched for by the certificate of the United States agent, and two documents immediately following it on the same page. We will here also state the well known fact, which can be officially shown by reference to the files of the War Department, that *Captain Vashur*, the agent, was the active and persevering advocate of the known policy of the government, which urged as large an emigration as possible under the treaty of 1828, especially until the State of *Georgia was relieved of her Indian population.*

This letter of the principal chief, *verbatim*, I believe will be found at pages 276–'7, same volume, when the delegation arrived in Washington and announced itself to the Secretary of War, on the 26th March, 1832.

At page 275, we have the letter addressed by this delegation to the Secretary of War, dated March 26, 1832, making known the object of their visit. The delegation, respectfully, but boldly, set forth the rights of the western Cherokees under treaty stipulations. They put down the following points, which they say constituted some of the most important considerations which induced them to visit Washington, viz:

"1st. To ask of the government a fulfilment of their promise to secure to them a *proportionable share of the lands east of the Mississippi.*

"2d. To cause to be paid out of the annuity, now annually due the Cherokees east, *our proportionable part of said annuity, to be determined by the number emigrated.*

"3d. A strict compliance with the 4th article of the 6th May, 1828.

"4th. An immediate application of the school fund, guaranteed to us in the 5th article of the above named treaty of 1828."

The delegation then proceed, in illustration of these subjects, to say: "Although the treaty of 6th May, 1828, does not contain in it any stipulation guarantying to us any additional lands to that described in the second article, it is nevertheless true, that while the negotiation was pending which produced said treaty, the government *made repeated promises to our brethren that their lands should be extended in proportion to the number that might emigrate.* Part of the delegation, to whom these promises were made, are now here, and are willing to testify to the fact. It must certainly appear reasonable and just that, unless a promise of this kind had been made, they would have *refused to receive them into their*

country, and allow them to participate in the enjoyment of all those privileges which they had been possessed with under former stipulations without receiving, in some way, an equivalent!"

The appeal of the western delegation, above cited, was enforced in an argument of much strength and eloquence, addressed to the Secretary of War, by John W. Flowers, who accompanied them and signed the treaty as "counsellor for the delegation." It will be found on pages 316, 317, 318, and is dated May 14, 1832.

Mr. Flowers, on the part of the delegation, had previously, (on the 26th April, 1832,) addressed a letter to the delegation from the eastern nation, comprised of John Martin, Wm. S. Coody, and John Ridge.—[Page 318, et. seq.] On the next day Martin and Ridge replied to this letter. Their answer is short, emphatic, and to the point. *Two nations, separate and distinct from each other,* are shown to exist among the Cherokees, the rights of neither of whom could be impaired by the acts of the other. In speaking of the wrongs complained of by the western Cherokees, as inflicted by the emigration produced by the treaty of 1828, the eastern delegation says: "This system of emigration has been adopted without the *consent*, and *contrary to the wishes, of the nation we have the honor to represent.* Therefore it is that we cannot perform, in this matter, any other act than to sympathize at the grievancies of the *late emigrants;* and if they have been, to their injury, inveigled to measures on the fair promises of the United States, it is to that *government* they are to look for justice! In regard to any misunderstanding as to the intentions of the United States and *your nation*, of the designs and bearings of the treaty of 1828, the proper explanations thereto, it is obvious, attaches to the CONTRACTING PARTIES!! [Same document, page 320.]

In anticipation of the application which the delegation of western Cherokees were instructed to submit to the government, for an increase of the country west, in proportion to the quantity of lands relinquished by the eastern Cherokees, who emigrated under the treaty of 1828, and also a proportionate increase of the annuity to which they were entitled in the east, to be deducted from the *eastern nation*, the delegation from that nation (Messrs. Martin, Coody, and Ridge) addressed a letter to the Secretary of War on the 24th March, 1832, (two days before the western delegation submitted their proposition,) in opposition to the measure. They there take the broad ground, that the *eastern nation* can in no way be affected by the treaty of 1828, to which *it was not a party;* and say, in defence of their position: "We cannot believe that such a proposition will meet the approbation of the government, taking into consideration the *manner in which this emigration originated.* By *a treaty*, NOT *made with* OUR NATION, inducements are offered for the removal of the eastern Cherokees to the Arkansas, and the government stipulates to pay for the *improvements* which they may abandon. A small portion of our citizens under that arrangement have emigrated, and a few more are about to emigrate; but, taken altogether, they bear but a small proportion to the whole population remaining.

"The Arkansas Cherokees already receive a third of the annuity stipulated to our nation, when, in fact, were they to receive an equal division, in point of numbers, they would not receive one-fifth, and the whole number of emigrants gone, or about to go, enumerated with them. But in what way can it be that OUR nation is to be held bound by an instrument never assented to?—or by a portion of its citizens who have yielded all their claims on the nation, and their right as citizens, *by a voluntary abandonment of the country, and removal west of the Mississippi?* By the treaty of 1819, a country was provided for all who chose to remove, and the United States was amply satisfied for all claims for that cession of lands for those who had removed, or might *thereafter* emigrate. It is true, the Arkansas Cherokees afterwards exchanged their country, but still the provisions of the treaty of 1819 remained the same; and for all the emigrants who have since then gone westward, the government can assert no reasonable claims on our nation. And how it is possible for a few individuals who have voluntarily abandoned the country to affect or alter the treaties which exist between *our nation* and the United States, it is impossible for us to conjecture. Nor can we imagine any reasonable claim they can set forth either to a portion of the annuity, or any other benefit coming from the government to *our nation!!!*

"We would respectfully remonstrate and protest against any deduction being made from *our annuity*, or in any manner disposed of contrary to the uniform practice of the government, the obvious meaning of our treaties, and the wishes of *our nation*." [Same doc., page 274.]

We will here refer to another letter from the Arkansas delegation to the Secretary of War, dated April 11th, 1832, (page 286 of same doc.,) to show that the 8th article of the treaty of 1828 was confined by the government of the United States to the Georgia Indians alone.

[*Read this letter, and also a letter commencing on same page, signed by Hugh Montgomery, enrolling agent, which will show the cost of rifles furnished the emigrants under that article to average* $13 22.]

There is an important correspondence published in same document between the War Department and Elisha W. Chester, esq., a confidential agent of the government, sent amongst the eastern Cherokees for the purpose of procuring their assent to a sale of their country, and removal beyond the limits of the States. The first report of Mr. Chester to the War Department concerning this mission, will be found at page 421. This report encloses a correspondence between the agent and Mr. Ross, commencing on page 424, and ending at page 427, a portion of which, marked B and C, we quote as follows:

"COUNCIL GROUND, *Cherokee Nation, July* 31, 1832.

"SIR: I am instructed by the Secretary of War to say, that such is his confidence that a country can be selected for the Cherokees west of the Mississippi, which will meet their approbation, that he

is willing to enter into a negotiation subject to that condition. In other words, the terms of a treaty can be arranged and agreed upon, which shall not be binding upon the Cherokees until they shall have examined the country and agreed to accept it. Such a course would enable the President, should it be found necessary, to enter into negotiations with any of the tribes west of the Mississippi, in order to effect any desired arrangement for the Cherokees. If apprehended want of a suitable country to which they may remove be an obstacle in the way of a *treaty*, it cannot be an obstacle to such a conditional arrangement as is suggested.

"Should any additional explanations be desired by the council, I shall be ready, whenever they may wish, to attend to them personally, and afford any information in my power.

"Be so good, sir, as to communicate this to the general council; and accept for yourself the assurances of the high respect of

"Your obedient servant,

"ELISHA W. CHESTER.

"JOHN ROSS, Esq., *Principal Chief Cherokee Nation.*"

[*Mr. Ross's reply to Mr. Chester.*]

"RED CLAY, *Cherokee Nation*, *July* 31, 1832.

"SIR: In reply to your letter of the 20th instant, submitting the communication of the Hon. Secretary of War to the "*Cherokees east of the Mississippi*," and requesting that I should lay the same before the "general council," and also to your note of the same date, I have to request you to inform me if your authority, under the instruction of the Secretary of War, has been extended since you showed me at my residence your instructions on the subject; and if so, that the same be exhibited before the executive council, if consistent with your own disposition.

"I am, sir, your obedient servant,

"JOHN ROSS.

"ELISHA W. CHESTER, Esq."

We respectfully call the attention of the board to the whole of this correspondence, to show clearly and beyond all doubt, that in July, 1832, *John Ross* did not even pretend to set up a claim to any country west of the Mississippi river. Direct and positive reference is here made to the purchase of a country for the EASTERN CHEROKEES *from some of the western tribes, but not one word is said about the country of the western Cherokees!!*

There is another letter from Chester to the acting Secretary of War, (same doc., page 431, et seq.,) to which we ask the especial attention of the board, as it goes to show the views *suggested to him by the government* respecting the ultimate destination of the *eastern Cherokees*. We will read one paragraph of this letter, which is dated August 16th, 1832, and is in the following words:

"I see much weight in your remarks in relation to a *removal of the Cherokees west of the Rocky mountains;* and doubt not the reasons you have urged against this project will be conclusive with them, *if a nearer country at all satisfactory can be found.* But the opinion that there *is none at the command of the government* affording good land, timber, water and health, is so prevalent among them, it is a matter of so much importance to induce them to take some step in the business, that I shall avoid if possible at present, except to one or two confidential friends, either encouraging or discouraging the project. Their conversation and speculations latterly upon the subject, have been confined to themselves, and has only come to my knowledge through friends. It will be no difficult matter to *discourage them from emigrating to so distant a region, if they can find a country on the Arkansas in any degree corresponding with their wishes;* and this the agent accompanying the exploring party should have specially in charge."

At page 471, same document, will be found another letter from Mr. Chester to the acting Secretary of War, dated September 29th, 1832, in which he says: "In obedience to your instructions, I shall attend the meeting of the Cherokee council, and use every effort in my power to induce them to accept of the propositions of the government, &c. * * * I should be glad to be instructed by you whether, as I was before instructed, I shall say that the government is still willing to enter into a treaty, to be void, *unless a country satisfactory to the Cherokees can be obtained!*"

Let it be remembered that this correspondence took place more than two months BFTER the board of commissioners were appointed to go west, for the purpose of holding a treaty with the "western Cherokees," for the *adjustment of the boundaries of their country*, and which treaty was concluded in February, 1833, *confirming to them* EXCLUSIVELY *a fee simple title for that country.*

We will refer to one other official communication, which will be found on page 612 of the volume above cited. It is a letter from the Secretary of War to Governor Lumpkin, of Georgia, dated March 12th, 1833, one month AFTER the last treaty was negotiated between the United States and western Cherokees. The second paragraph of this letter reads as follows:

"I had much conversation with them [the delegation from the eastern nation who had just left the seat of government] on their business, and stated to them specifically the terms the President was disposed to offer, founded on the propositions made to them last year. They were desirous that a sum in goods should be mentioned, which the government would be willing to give, if they would relinquish all their rights east of the Mississippi, and *seek a country for themselves at their own expense!* The President authorized me to offer them $2,500,000, believing that to be the value of the land in which they have an interest, which does not exceed six millions of acres. They declined, however, making any arrangement, saying that the subject must be referred to their people. And thus the matter stands for the present."

At pages 22 and 23 of this volume will be found a letter signed

by John Martin and Wm. Shorey Coodey, delegates from the Cherokee nation east, addressed to the Hon. Lewis Cass, Secretary of War. This letter is important as to the temper it exhibits, in speaking of the *President of the United States*, and its expression of determination on the part of the eastern Cherokees not to submit to an extinguishment of the title to their lands east, by persons who chose to emigrate and join the nation west of the Mississippi. It is dated Washington city, January 18, 1832, and uses the following language:

"SIR: Your reply to our communication has been received. If the Executive supposes, as it would seem, that we are opposed to the voluntary removal of any of our people, it is a mistake. Those who choose to go, are at liberty to do so, and those who desire to remain will, we trust, have the like option. We remonstrated against the course pursued of permitting intruders to take possession of and occupy the place left vacant by emigrants. Such a mode of extinguishing the title of the Cherokees to their lands is certainly one never contemplated by any one until the present chief magistrate came into office, and is at war with all the professions of the government, and the principles of its action heretofore. It is, in our opinion, a mode to effect their removal which partakes more of *force* than of friendship. What stronger evidence does the President wish, in relation to intrusion, than the numerous complaints made by our nation, and the reports made by the United States agent on the subject?"

* * * * * * * *

"If the evils under which they labor are not 'adjusted' until we come into 'an arrangement' with the government for their removal westward, then will they never be 'adjusted.' We have not come here to 'see for them,' but to assert their rights and maintain their position.

"If all the subsisting treaties and laws which have in them their foundation, are not to be observed, but thrown aside as mere *nothings*, what is there to flatter them into a belief that the government will be more faithful when they arrive upon the borders of the desert prairies of the west?

"With must respect, your obedient servants,

"JOHN MARTIN.

"WM. SHOREY COODEY."

At page 227 of same volume, we find a letter of a different character. It is from John Walker and James Starr, citizens of the eastern nation, who came to the seat of government, as the friends of their western brethren, who had emigrated under the provisions of the treaty of 1828, and for the purpose of aiding in effecting some arrangement which would continue that emigration, and at the same time do justice to the western Cherokees. These two men were the sincere and steadfast friends of their people, and were among the first to adopt and advocate the views of our government in relation to the removal of the whole nation to a coun-

try west of the Mississippi, and beyond the limits of the States. For their fidelity in this respect, they have both been murdered by the party opposed to that removal. Walker was waylaid and assassinated shortly after he returned home from this mission, and old James Starr murdered in the most cruel manner recently in the Cherokee nation. Their letter is dated March 4th, 1832. We call the attention of the board to the following passages: [Here read from the book, page 227, the passages marked.]

We have now with much labor brought before you the book and page, to prove clearly and conclusively that anterior to the treaty of 1835, the eastern Cherokees made no claim to the country west of the Mississippi; that until that period the country west was considered, by the eastern Cherokees and the United States, the property of the western Cherokees, to which neither of them had any claim; that this country was paid for by its owners, with their portion of the lands they relinquished to the United States by the treaties of 1817 and 1819, and again in 1828. We have shown also from our country's record that anterior to the treaty of 1835, that the government of the United recognised two nations of Cherokees, separate and distinct from each other.

We now approach the treaty of 1835, under which John Ross and his nation also claim the country of the western Cherokees, secured to them by former treaties. Let us hear his opinions of that treaty before he was enlightened by his present counsel. At a council of him and his party, held at Red Clay on the 24th October, 1835, in anticipation of the treaty, the following declaration was adopted, viz:

"We, the people of the Cherokee nation in general council assembled, do hereby solemnly protest against selling our country, *on the basis of the five millions of dollars, and will never sanction such a treaty.*" (See document 286, House of Representatives, 1st session 24th Congress, page 80.)

At a council held at the same place, the following declaration was adopted on the 3d day of February, 1836, in reference to the treaty of the preceding December, not yet ratified, viz:

"Now be it known that we, the undersigned members of the committee and council in general council convened, do most solemnly protest, before God and man, against the said treaty, and of its ratification by the Senate of the United States, as we are determined never to acknowledge any acts of individuals without authority to treat away our most sacred rights and dearest interests of the Cherokee people." (See same document, page 114.)

In a "memorial and protest of the Cherokee nation" against the ratification of the treaty of 1835, signed by John Ross and and others, as "representatives of the Cherokee nation," and submitted to the Senate on the 11th March, 1836, you will find the following passage, viz:

"The delegation are sure it cannot be the wish of the Senate of the United States to ratify and have enforced upon the unoffending Cherokee people a treaty made without their authority, *false* upon its face, and against the known wishes of the nation. Such

is the instrument submitted to your honorable body. For the truth of this statement, should the Senate require further proof, it can be obtained from numerous persons of unimpeachable integrity and veracity. But if it be the fate of the Cherokee people, and the decree has gone forth that they must leave their homes and native land, and seek a new residence in the wilds of the far west, without their consent, let them be expelled and removed *by an act of Congress*, when they or their posterity in after times may have some claims upon the magnanimity of the American people. The delegation do solemnly declare they would consider such an act preferable and more humane than the ratification and enforcement of a *fraudulent treaty*, *false upon its face*, *and made without the consent of one of the professed contracting parties.*" (See same document, page 31.).

On the 26th May, 1836, John Ross, being then, as he is now, the *embodiment* of his party, wrote a letter from Washington to his friend, George Lowry, in the Cherokee nation, which contains the following passages, viz: "The Senate have not yet removed the injunction of secrecy from their proceedings upon the *fradulent* treaty which they have ratified, and how far they will go to involve the Cherokees, I do not know, for I have not been informed; but it is true they have made some alteration in the treaty." * * * * "*Some of the members say that the President is displeased with the Senate's amendments; and others say that what has been done cannot be viewed as final until the majority of the whole Cherokee people shall approve it*, for, even according to *Schermerhorn's* own statement, there is not one in every ten Cherokees who approves of what has been done. But all that has been done would be nothing, if the Cherokees would be firm in their minds, and *consider it the same as if there was no treaty made and ratified*, *and be strong in this resolution*, *and not adopt the provisions of the fraudulent treaty made by unauthorized individuals.* If they would do this and remain still and quiet, the government would then give up the idea of treating with them, and we should gain a great deal, and the Cherokees would become enlightened, and our minds would be made glad." * * * * "I depend on *you* to inform the people of the contents of this letter, and let them all be informed, so that they may be on their guard, and not suffer themselves to be deluded." (See doc. 120, S., 2d session, 25th Congress, pages 674, to 680.)

Again, we find him transferred from the Cherokee nation to Washington, and, at the head of his delegation, on 22d June, 1836, (a month after the ratification of the treaty,) he memorializes the House of Representatives, with the hope of preventing an appropriation to carry the treaty into effect, as follows, viz:

"The delegation must repeat the instrument entered into at New Echota, purporting to be a treaty, *is deceptive to the world*, *and a fraud on the Cherokee people.* If a doubt exist as to the truth of their statement, a committee of investigation can learn the facts, and they may also learn that, *if the Cherokees are removed under that instrument*, *it will be by force.*"

On the 28th September, 1836, another general council, held at Red Clay, among other things, resolved, "that the said instrument is *null* and *void*, and can never, in justice, be *enforced* on our nation. And we do hereby solemnly *disclaim and utterly reject* said instrument in its principles and all its provisions." (Document 120 aforesaid, page 798.)

This council also deputed John Ross and others to go on their annual pilgrimage to Washington for the purpose of opposing the execution of the treaty. In a memorial to Congress, signed John Ross, principal chief, George Lowry, assistant principal chief, and over two thousand others, they said:

"We are denationalized; we are disfranchised; we are deprived of membership in the human family! We have *neither land*, nor *home*, nor *resting place*, that can be called *our own!* And this is effected by the provisions of a compact which assumes the venerated and sacred appellation of *treaty*." * * * * *

"The instrument in question *is not the act of our nation;* we are not parties to its covenants; it has not received the sanction of our people. The makers of it sustain no office or appointment in our nation under the designation of chiefs, headmen, or any other title, by which they hold or could acquire authority to assume the reins of government, and to make bargain and sale of our rights, our possessions, and our common country. And we are constrained solemnly to declare that we cannot but contemplate the enforcement of the stipulations of this instrument on us, against our consent, as an act of injustice and oppression," &c. (Document 120, page 800.)

Again: on the 16th March, 1837, we find Mr. Ross and his delegation protesting, in conjunction with the western Cherokees, against the treaty of 1835, in a memorial addressed to the President, in which they say:

"The Cherokee nation *never authorized the formation of this spurious compact.* They never conferred on the individuals who signed it any authority to give their assent. They have never recognized its validity, and *never can.* They have protested against it as a fraud upon themselves and upon the United States." (Document 120, page 803.)

Again: on the 22d February, 1837, the same parties memorialized Congress, and spoke as follows:

"In the name of the whole Cherokee people, we protest against this *unhallowed*, and *unauthorized*, and *unacknowledged compact. We deny its binding force.* We recognise none of its stipulations. If, contrary to every principle of justice, it is to be enforced upon us, we shall, at least, be free from the disgrace of self-humiliation. We hold the solemn disavowal of its provisions by eighteen thousand of our people." (Same document, page 810.)

A council held at Red Clay on the 8th of August, 1837, to receive the report of the delegation, adopted the following resolution, viz:

"*Resolved*, That the doings of the delegation who have just reported, meet the unqualified approbation of this council, for which

they are entitled to our thanks, which are hereby affectionately and respectfully tendered to them." (Same document, page 990.)

Mr. Ross and his delegation were again appointed to go to Washington to oppose the execution of this treaty; and General John Mason, junior, who attended the council as agent for the United States, (and who, until very recently, has appeared as counsel for the Ross party,) in his report to the Secretary of War made the following statements:

"They [the Cherokees] understand their condition perfectly, and appear resolved, be the consequences what they may, *not to emigrate under the existing treaty, or to do any act which can be construed as giving assent to it.*" * * * * * "The chiefs and the better informed part of the nation are convinced that they *cannot retain the country.* But the opposition to the treaty is *unanimous* and *irreconcilable.* They say it cannot bind them *because they did not make it; that it is, in fact, a fraud upon the Cherokees and upon the United States;* that they will never agree that a *handful of traitors* shall sell their country, and determine the destiny of their people; that they never will believe, until they see the federal bayonet, on the fatal 23d of May next, levelled against the breast of the Cherokee, that the government of the United States can attempt to enforce a proposition so revolting to justice and humanity." * * * * * *

The delegation, headed by Ross, came to Washington; but all their efforts, with the aid of General Mason, and strong *political* influence they brought to bear in opposition to the administration, were unavailing; and one of the last acts of Mr. Ross and his party, on this side of the river, was the following declaration, made in convention at Aquokee camp, on the 1st day of August, 1838, viz:

"Whereas, the title of the Cherokee people to their lands is the most ancient, pure and absolute known to man—it dates beyond the reach of human record—its validity confirmed and illustrated by possession and enjoyment antecedent to all pretence of claim by any other portion of the human race;

"And whereas, the free consent of the Cherokee people is indispensable to a valid transfer of the Cherokee title; and whereas, the said Cherokee people have, *neither by themselves* nor *their representatives*, given such consent, it follows that the original title and ownership of said lands still rest in the Cherokee nation, unimpaired and absolute;

"*Resolved, therefore, by the national committee and council, and people of the Cherokee nation in general council assembled*, That the whole Cherokee territory, as described in the first article of the treaty of 1819, between the United States and the Cherokee nation, still remains the rightful and undoubted property of the said Cherokee nation; and that all damages or losses, direct or incidental, resulting from the enforcement of the alleged stipulations of the pretended treaty of New Echota, are, in justice and equity, chargeable to the account of the United States." (Doc. 1, Senate, 1st session 26th Congress, page 417.)

Let it be borne in mind that the above declaration was made whilst Mr. Ross and his delegation were in correspondence with General Scott for the removal of the "Cherokee nation," under the treaty of 1835, and on the very day (August 1st) before the celebrated contract for that removal was consummated.

Now who would suppose, after all that has been read of Mr. Ross's denunciation of the treaty of 1835, up to the very moment of his forced removal, that he ever would set up a claim for the country of the western Cherokees under its provisions? After he crosses the Mississippi, the same declarations of hostility against that treaty are re-affirmed on the soil of the western Cherokees. They are found engrafted upon the act of union of 1839, and the constitution based upon that act. This act of union, as well as that adopted in June, 1840, asserts a claim to lands *east of the Mississippi river*, which are to be considered as a portion of the whole Cherokee domain, and was one of the principal considerations offered to the western Cherokees for an equal possession in *their* lands. Both "acts of union" say: "All rights and title to public Cherokee lands, on the EAST *as well as the west of the river Mississippi*," shall "vest entire and unimpaired in the Cherokee nation, as constituted by this union." The Cherokees had no lands on the east of the Mississippi, if the treaty of 1835 was a valid instrument. If the eastern Cherokees believed they still owned the country east, for which they claimed twenty millions of dollars, when they entered into this "act of union," why they made a liberal offer to the western Cherokees, by agreeing to give them *one-third* their proportionate share) of this sum, for their proportionate (two-third) interest in the country of the western Cherokees. But if the insertion of "public lands *east* of the Mississippi" meant nothing, why, the lands west of the Mississippi must be released from all obligation under that act! The one promise must go with the other.

We have said that the constitution of the Cherokee nation, which is based upon the act of union of 1839, denies the existence of the treaty of 1835. This constitution was adopted on the 6th December, 1839, and will be found in reports of House of Representatives, No. 1098, 2d session 27th Congress. The 1st section of the first article, reads as follows: "The boundary of the Cherokee nation shall be that described IN THE TREATY OF 1833, between the United States and the WESTERN CHEROKEES, subject to such extension as may be made in the adjustment of *unfinished business with the United States*."

It will be perceived that the treaty of 1835 is entirely passed over, and not recognized as a treaty. The 800,000 acres of land purchased by the Cherokees by that treaty is not claimed! And the Cherokee government, as now formed, cannot claim that land, or exercise jurisdiction over it. The constitution speaks of an extension of country, but that must be done *thereafter*, in the adjustment of unfinished business with the United States.

In our argument in chief, we have shewn the manner in which the old chiefs, John Ross and John Rogers, here deposed; and that

deposition was sanctioned in the presence of at least two thousand armed men at the Illinois camp ground, when the "act of union," that "spurious and fraudulent instrument" (using the language applied by the Ross party to the treaty of 1835) was brought into existence. Let us now pause, and return to the opposition manifested to the treaty of 1835, by Mr. Ross and his party. We have shewn that they used the following language: "*That they never will agree that* A HANDFUL OF TRAITORS *shall sell their country, and determine the destinies of their people.*"

We ask the honorable board to ponder and reflect upon this sentence, and they will perceive with what overwhelming force and effect it might be applied to the revolutionary proceedings in 1839, to which we have just referred, which dissolved the western Cherokee government, and conveyed the "country" and the "destinies" of these people to the usurper. John Ross and his thirteen thousand protestants, who so manfully denounced an arrangement made with a minority of their nation, as "a fraud upon the Cherokees and the United States," alike "revolting to justice and humanity," could then make use of "*a handful of traitors*" to aid *them* in *abolishing a government* and *despoiling a nation.* This "handful of traitors" was headed by poor *John Looney*, who ended his miserable existence in this city, some two or three months since, as a member of the Ross delegation.

John Ross and his adherents continued to repudiate the treaty of 1835, on every public occasion. In the year of 1841, whilst Mr. Ross was on his way from Washington, where he had succeeded in procuring upwards of half a million of dollars out of the fund provided by the treaty of 1835, to pay for the Cherokee lands east of the Mississippi, the legislature of the nation was convened by Mr. Andrew Vann, 2d chief of the nation. The subject of *per capita* money accruing under the treaty of 1835, was fully discussed, and the legislature passed an act directing that the balance of the money due the Cherokees under that treaty should be ascertained, and immediately divided among them. Immediately after the passage of this act, Mr. Ross reached the nation, and resumed the duties of principal chief. He recommended the repeal of the PER CAPITA act; and after a fierce contest of several days, it was repealed. The Cherokees, it was then said, [*I reached* the nation in December, 1841, immediately after the act was repealed] were quieted on their head-right or *per capita* money, by the presentation by Mr. Ross of President Tyler's letter of the 20th September, 1841, in which he tells the *nation* that he has directed all their claims to be paid, and promises them a new treaty. This letter, which is directed to Mr. John Ross and others, was publicly read in council, and silenced all clamor about *head-right* money under the treaty of 1835; for instead of receiving a few thousand dollars under such distribution, they were taught to believe they would obtain as many millions under the new arrangement promised in President Tyler's letter. Thus was John Ross, the chief, again reinstated in the opinion of his people, as the greatest diplomatist in the world. The treaty of 1835 was again repudiated,

and everything was left to his management. We will now bring the opposition made to that treaty to a close.

In his message to *his council*, in October, 1844, John Ross held the following language, viz:

"The instrument which was signed by individuals of our nation, and John F. Schermerhorn, as commissioner on the part of the United States, at New Echota, in 1835, and *called a treaty, has never been authorized by our nation, nor since acknowledged by the Cherokee people, so as to make it* LEGALLY BINDING; and withal, its stipulations are so full of ambiguity that the differences of opinion, in regard to their construction, have been productive of much dissatisfaction. These facts, however unpleasant it may be, will compel us to continue and keep up the painful controversy with the authorities of the United States, until the subjects in dispute shall be more satisfactorily arranged."

Could we have supposed that, after all this condemnation of the treaty of 1835, Mr. Ross and his party would now present a claim, under its provisions, to the lands west of the Mississippi, secured to the western Cherokees by the treaty of 1833? I ask the counsel on the other side whether his clients now recognise the treaty of 1835. I understood the first part of his argument in chief still to deny the existence of that treaty as a *binding compact*. If this be so, the government of the United States is released from all obligation under it. It only remains for them now to say whether they will execute it or not, except in the adjudication of private claims, with which the nation has nothing to do. But the Cherokee government, if recognised as the government of the Cherokee nation, can maintain no claim under that treaty, if it denies its *binding force!* If, on the other hand, Mr. Ross and his government now acknowledge the validity of that treaty, and desire all its stipulations to be carried into effect, then we suggest whether the proper representatives of the nation, in the transaction of all its business with the United States arising out of these stipulations, are designated in the 12th article!

The advocate for the Ross party, in the whole course of his argument, has not been able to cite a single authority which goes to support the unwarrantable assertions which he has made in his attack upon the claim of the "western Cherokees" to the exclusive ownership of the country west of the Mississippi, except the report made by the commissioners sent into the Cherokee country by President Tyler in 1844. This report is introduced as the safety valve of the high pressure declamation, introduced into his late argument, and in his memorial to Congress, dated April 30, 1836, signed by John Ross and the members of his delegation, which has been referred to the special attention of this board. The mode and manner in which that report was ushered into being has been sufficiently exposed, and we only refer to it now to meet an expression of surprise which the sagacious counsel has thought proper to manifest on account of that and other positions. If we understood him correctly, his feelings were much shocked to hear any allusion made by the counsel opposed to the pretensions of

Mr. John Ross against "high officers of the government, and especially against a former Secretary of War." It is not charged, nor could such a charge be sustained, that the "old settlers," during all their troubles, produced by want of sufficient protection by the United States, ever pronounced one word or syllable of unkindness against an officer of the United States government; but the counsel of these people, employed to prosecute their claim, have done so in the exercise of a right which is always conceded in similar cases.

But let us look at the conduct of Mr. John Ross and his followers in this respect. Is he, or any of his delegation, the author of the memorial to Congress above alluded to? If they are, then they are chargeable with the denunciation levelled against the Commissioner of Indian Affairs, which will be found on the 1st and 2d pages of that memorial. In speaking of the recent report of the Commissioner to the President of the United States on Cherokee difficulties, Mr. Ross and his delegation say:

"The style of the report is much more that of an *excited partisan* and advocate, than that of an impartial judge. The undersigned have felt it their duty to allude to this as in a great degree diminishing the weight of authority to which the Commissioner of Indian Affairs would have been entitled, if those opinions had been formed less under the *influence of prejudice*, and expressed in language more usual in official documents—more *temperate* and *impartial*. It is worthy of remark, that whilst among the papers accompanying this report are to be found every form of *vituperation* and calumny against the *constituted authorities of the Cherokee nation*, and emanating from an equal variety of sources, from a *General in the army of the United States* down to the *ex parte* and unauthoritative statements of the most *abandoned persons*, not a single paper exculpatory of those thus assailed has been communicated to Congress, nor one word even in extenuation of their conduct."

Is this not a direct attack against the impartiality and integrity of the Commissioner of Indian Affairs?—which, if true, would render him entirely unfit for the responsible station he holds. But let us look at the facts upon which these charges are based. During the long four years of the last administration, the old settlers could not approach the threshold of the executive mansion. Their groans were stifled at the door of the War Department, or Indian Office, under the orders of a secretary who would know or acknowledge no Cherokee delegation not headed by Mr. John Ross. The present Commissioner of Indian Affairs, not under the trammels placed upon his predecessor, has taken up the whole question of title to the country (presented by the old settlers) for the first time, and has brought it before the Secretary of War and President. This they have endeavored to have done for the last five years without success. The Commissioner of Indian Affairs, it is evident, gave the subject a laborious and careful examination, from the lucid and able report he has made upon it. The conclusions arrived at in this report, with regard to the "old settlers'" title

to the country west, would be confirmed by ninety-nine out of every hundred men in the country who would examine the question. But it did not suit the palate of the sensitive chief, and the commissioner must be denounced as an "excited partisan and advocate" of the old settlers.

But this is not all we have to say upon this subject. We are not yet done with the great chief, who has heretofore managed to have himself lauded to the skies through newspapers opposed to two former administrations, as "*a pure, disinterested patriot*, whose mildness and amiability of disposition alone carried him through all the trials and privations he endured, whilst struggling against the government of the United States for the welfare of his beloved people." He has had volumes published upon this subject; and his own paper in the Cherokee nation is at this moment teeming with the vilest vituperation against high "public functionaries of the government," and sending its missiles for republication in the east, for the purpose of destroying the old settlers and treaty party in public estimation.

But let us go back to the stirring scenes of 1832, and we may, perhaps, even startle the advocate of the patriot chief, by an exhibition of the audacity he then manifested in assailing one of the greatest and purest patriots that ever lived—who was then the chief magistrate of this nation, and called the great father of the red man. We again refer to Senate doc. 512, 3d vol., containing the correspondence on Indian emigration, between the 30th November, 1831, and 27th December, 1833. At pages 314, 315, and 316, of that document, a letter will be found, signed JOHN Ross, addressed to Thomas Foreman and other citizens of Ahenohee district, of the Cherokee nation, advising them to resist the views and wishes of the President of the United States with regard to a contemplated treaty, which was then urged by the President to preserve the nation from utter annihilation and ruin. The letter is dated "Head of Coosa, Cherokee Nation, April 28th, 1832." We will read a few extracts from it, and leave the book in the possession of the board. In cautioning his people against the artifices of those who may be disposed to favor or forward the "policies of the President for their national ruin," he says:

"The Supreme Court, in the case of Worcester & Butler *vs.* the State of Georgia, has determined the question of our national rights as fully as can be. The decision is final and cannot be revoked; but the course of legal proceedings is necessarily attendant with tardiness; consequently, should the authorities of Georgia refuse, as they have done, to release immediately those much injured imprisoned gentlemen, and continue for a while still to arrest and oppress our citizens, we should not be discouraged because the President, out of his disappointment, may still pursue a political course towards us, under the fruitless hope that, by withholding from us the protection of the government, a treaty may yet be effected previous to the *time when it shall become his imperious duty to act* for the enforcement of this decision of the court. The conflict is now between the United States and Georgia, and the

final issue ere long will be seen. Should Georgia prevail, *the union of the States is dissolved;* but should the United States regard the constitutional liberties guarantied to their citizens, Georgia must submit to see the Cherokees triumph over their oppressions under her usurped authority; therefore, let the people endure patiently and await the final result.

* * * * * *

"The President has repeatedly said to us that the Cherokees will be *protected in their territorial possessions*, and he has also boasted of never having told a red brother a lie, nor spoke to them with a forked tongue. We have a right, however, to judge of this bravado for ourselves from his own acts.

"The decision of the Supreme Court, under the treaties, laws and constitution, is the strong shield by which our rights must be respected and protected; and under any other administration than General Jackson's there would be no trouble or difficulty on the subject; even under his, the crisis is at hand to induce him to act otherwise than he has done, or else his political career will be prostrated."

We have shown that by the treaties of 1817 and 1819, the Cherokees were then divided into three classes. One class, and the largest, was composed of those who desired to remain east and become cultivators of the soil. The second were those who parted with their interest in the Cherokee country east, ceding it to the United States, from whom they received an equal quantity of land beyond the Mississippi. The third class were those who took reservations under those treaties in full for their interest in the *common property* of the Cherokees, agreed to become citizens of the United States, and ceased to be members of the Cherokee nation.

You will find these reservations provided for in the 8th article of the treaty of 1817, and the second and third articles of the treaty of 1819, the latter treaty being made to carry out the provisions of the former.

John Ross was one of the delegation who signed the treaty of 1819, and took a reservation in pursuance of its provisions. By these acts he ceased to be a Cherokee, and became a citizen of the United States! The reservations were within the territory which was then ceded to the United States, and it was a condition of the arrangement that the reservees should promise permanently to reside upon them, thus separating themselves from the Cherokee nation and becoming citizens of the States. On the 17th June, 1819, John Ross gave the requisite notice to the agent, concluding as follows: "You will, therefore, please to acknowledge this as my notification, in compliance with the aforesaid stipulated condition, that it is my intention to continue to occupy and enjoy, permanently, the land reserved me in that treaty." (See document 286, H. R., 1st session 24th Congress, p. 72.)

The reservation was accordingly conveyed to him in *fee simple*. He thus received, under an arrangement made by himself, his portion of the common property, ceased to be a Cherokee and became

a citizen of the United States! How long he occupied his reservation we know not; but that he sold it for $5,500, and soon figured again among the rulers of the nation, is a matter of history.

Yes, this patriotic man sold his share of his country, put the money in his pocket, went back for another share, lived upon the national annuities many years, became the mortal enemy of "land settlers," and justified the murder of rival chiefs for selling a country, (of which they were already deprived by the laws of the States,) not for their own benefit, but for that of the whole Cherokee people. During all the scenes of Cherokee suffering, from 1828 to 1839, who informed him "that any arrangement short of a general removal of your people would neither relieve the difficulties of the present nor prevent those of the future?"

On the 25th of February, 1835, (same doc., p. 126, &c.,) Ross offered to sell the whole of the Cherokee country east for the sum of *twenty millions of dollars*. A proposal so exorbitant was at once rejected. A majority of the United States Senate was at that time opposed to the administration, and some of its leading members strongly condemned the policy pursued by the President in relation to the Indians. Ross and his adherents having been told by General Jackson that he would be as liberal to them as their friends in the Senate, requested that their propositions might be submitted to that body, and promised to be governed by their award.

This request was made in a letter to the Secretary of War, dated February 28, 1835, which concluded as follows: "Being extremely desirous that this unhappy controversy might be speedily adjusted, and deeply sensible of our dependant condition, and confiding in the liberal justice of the United States government, we are prepared, as far as we are concerned, to abide the award of the sense of the American Senate upon our proposition, and to recommend the same for the final determination of our nation." (Page 141 same document.) The request was complied with, and the Senate awarded the sum of five millions of dollars as the price to be given for the whole Cherokee country east.

The gentleman on the other side made a considerable display in his argument, on the subject of the propositions made by Mr. Ross to the President and Senate to sell the Cherokee country, for the purpose of showing that the *claims* of the Cherokees against the United States were not intended to be included in these propositions, but that it was a mere submission for a price to be fixed upon the *lands*. We ask the gentleman to turn to Senate Doc. 120, second session twenty-fifth Congress, and he can obtain much information on this subject which may be useful to him in concocting his next speech. He will there find that Mr. Ross did include the claims of his people in his estimate of the value of their lands and possessions; but the only difference between them and the United States was, that he wanted the money for this purpose placed in his own hands, and that he would *be* responsible for its application. His first plan had been to part with the Cherokee lands in Georgia, upon condition that they should receive a *fee*

simple title to the residue of the country lying in North Carolina, Tennessee, and Alabama, and submit to the laws of the United States. If he had succeeded in this, *it would have extinguished the Cherokee nation.*

This scheme, which was one of gigantic speculation, came to the knowledge of Governor Lumpkin, of Georgia, who wrote a letter to the Secretary of War in opposition to it, dated January 30, 1835, in which he said: "Ross is the dictator of his party among the Cherokees; if, therefore, *fee simple* titles be given to them, he (Ross) and his council would derive the entire benefit." [Doc. 120, above cited, p. —.]

John Ridge and a delegation of the treaty party, then in Washington, addressed the Secretary of War in relation to this scheme as follows:

"From *inuendoes* only we have found out that John Ross desires not, and never intends to procure, national privileges for the Cherokees in the west, or provisions for those who may wish to remove, but would join us, if we consented to the destruction of our people, in concluding a treaty on selfish principles. We did not come here to speculate on the destiny of our people, &c. * * * *

"They have spoken falsely to the Senate, by stating that 15,000 Cherokees hold their determination to become citizens of the States, and that we only represent 100 who are in favor of removal." (Doc. 120, p. 351.)

Ross's proposition was made on the 14th of February, 1835. (See Doc. 286, H. R., 1st sess. 24th Cong., pages 129, 130, 131.) On the 16th it was rejected by the Secretary of War, (pp. 132-'3,) in which John Ross played so distinguished and obstinate a part. He had no more right in the Cherokee country than any other American citizen adopted by the nation, and might have been removed under the intercourse laws as an intruder.

With the money obtained for that portion of his country which, by the treaty of 1819, Ross first sold to himself and afterwards to the whites, he occupied and improved another portion of the common property; and under the treaty of 1835, which he has always denounced as fraudulent and void, received for his improvements $23,600 out of the purchase money of the Cherokee country.

On the 20th December, 1839, Governor Stokes, United States agent, in compliance with instructions from his government, united in a call upon all the Cherokees to meet on the 15th of January, 1840, for the purpose of ascertaining the *will of the majority* respecting their difficulties! *The will of a majority of usurpers who came determined to take possession of the country and overthrow the existing government.* Look at the firm and determined conduct of the western Cherokees upon this trying occasion! On the 24th of December, the old chiefs, John Rogers, John Smith, and Captain Dutch, (who had been elected since the decapitation of their chiefs the preceding year,) in a letter to Governor Stokes, protested against this proceeding. They assumed the following grounds:

"*In the first place*, the legal authorities of the Cherokee nation west have not been consulted, nor have they had any agency in

convening the people to decide by vote which government shall prevail.

Secondly, We do not predicate the legitimacy of our government barely upon numbers, for long has the United States government acknowledged our government and treated us as a nation! And how often has Mr. Ross, while wielding the government of the western Cherokees, done the same and contended that we were distinct communities?" [See Senate Document 347, 1st session 26th Congress, pages 35–'6 "]

Afterwards, when the Ross party had forced an act of union and constitution upon the nation, General Arbuckle, in his report to the Secretary of War communicating this result (same document, page 54,) in speaking of the "old settlers," says:

"They are greatly dissatisfied with the late decision of the government, and assured me that it was their intention to claim of the United States the undisturbed possession of *seven millions of acres of land*, which they think they were entitled to; and that all the Cherokees who *have not voluntarily removed to this country and have refused to unite with them*, shall be removed from the lands they claim; otherwise, that they shall be permitted to enjoy a *fair participation* in the government of the Cherokee nation, and receive *an equal share of the sum to be paid for the Cherokee country east*, as provided for [*prohibited*] by the 15th article of the treaty of 1835."

On the 7th February, 1840, the old settlers held a council at Fort Gibson, and adopted an exposition of their rights, concluding with the following resolutions, viz:

"*Resolved*, That the conduct of Mr. John Ross and his partizans is an unprecedented act of usurpation, unfounded in justice, law, or humanity; and we will not in all future time acknowledge the same.

"*Resolved*, That the only legitimate government of this nation is the one handed down to us by the original settlers of the Cherokee nation west, and we will, to the utmost of our power and ability, uphold and defend the same."—(Same document, pages 55, 58.)

The western Cherokee nation is here in its representative capacity. John Brown, who was the principal chief of his nation, when its government was overthrown in 1839, is here in your presence. Captain Dutch, or "Tutchee," the old war captain of the "pioneers," alluded to by the counsel on the other side, as one of the *stewards*, sent by the eastern nation to care of their country in the west, is here. He was the last assistant principal chief of the western Cherokee nation, and found, in the year 1840, asserting the rights of his people to their country. There he sits, the scarred and shattered monument of the privations and perils endured and overcome by the hardy and gallant "pioneers," who sealed their title to the country west, after they had purchased it, with streams of their best blood.

These people now simply ask the fulfilment of their treaties entered into with the United States, all their rights accruing from which is centered in the treaty of 1833. They ask the United

States now to purchase the country secured to them by that treaty, and of which they are the only legal and rightful owners. The United States, then, being the owners of the whole seven millions of acres of land, with the outlet, can then dispose of these lands as it pleases, in allotting them to the different parties of Cherokees, either separately or as a united nation. We will submit, upon this point, specific conditions to-morrow.

We now submit our cause into your hands, with the earnest invocation that in its consideration you will have impressed upon your minds the important and sacred character of your connexion with the Cherokee parties now before you; that you will look upon the shattered remnants of a once powerful people, who contributed so much to the wealth and power of this great nation, as being worthy of your consideration; that you will frown upon every attempt, no matter from whence they emanate, to force upon you a construction of existing treaties, other than is warranted by the manifest *intention* and *meaning* of the contracting parties at the time they were negotiated; and that you will hold sacred that great principle of *international law*, which gives the benefit of all doubts arising in the interpretation of treaties to the weaker party. That you *will* give us all these benefits in the course of your investigation, we solemnly believe, and that your JUDGMENT will be based upon the principles of *law and justice*.

L.

WASHINGTON, *August* 3, 1846.

The undersigned, delegates representing the "Cherokee nation west of the Mississippi," as recognised by the treaties of 1828 and 1833, have been advised by their counsel, after full consultation and deliberation, to agree to a treaty on the basis of the decisions made and announced, by your honorable board, on the 30th ultimo, with the explanations since given, and the admission that the western Cherokees, now called old settlers, should be considered as constituting one-third of the whole nation. That basis was established as follows, viz:

1. That the "old settlers" shall, in the settlement to be made, be recognised as *one-third* of the Cherokee people, as conceded and settled by the treaty of 1817, and convention of 1819, when, through them, the United States acquired *one-third of the Cherokee country east of the Mississippi river;* and in confirmation of this arrangement, and in proof of its equity, the eastern Cherokees agreed to assign to them the one-third of the existing annuities due the whole nation.

2. That, in ascertaining the value of the equitable interest in the Cherokee country east, now conceded to them, the appropriations, made to carry into effect the treaty of 1835, shall be taken as the basis; and there shall be deducted only such charges as are warranted by a proper construction of that treaty. The commis-

sioners have decided that these proper charges are: 1st, the amount fixed by the 8th article for commutation of removal and subsistence; 2d, the sums paid for improvements, and other objects, under the 9th article, properly chargeable to the Cherokee fund, excluding all sums paid for reservations, rents, and damages, charged under the name of improvements or otherwise, and all other sums palpably not a charge upon that fund, according to the true intent and meaning of the treaty; 3d, in addition to the above charges, on account of private claims, to be deducted from the treaty fund, the sum of $500,000, given by the Cherokees for eight hundred thousand acres of land west of the Mississippi; and all monies added to the existing permanent fund of the nation by the sale of the country, under the treaty of 1835, shall also be deducted, before the amount agreed to be paid to the western Cherokees, or old settlers, can be ascertained.

3. That, so far as the old settlers are concerned, they shall not be affected by any payments to be made out of that fund, after signing this treaty.

4. That, taking the fund so ascertained as the sum to which the eastern Cherokees would have been entitled to, *per capita*, as the price of their country, had no misapplication or waste of this fund taken place, the old settlers, (having neither aided in, nor profited by, this misapplication or waste,) shall receive, from the United States, a sum equal to the one-half thereof; thus placing them upon an equality with the other two-thirds of the nation, in regard to *per capita* money, had the whole Cherokee fund been properly applied.

The object of this communication is to announce to the honorable board that they have given your propositions for a final settlement of all matters in dispute between the United States and the Cherokees, and between the Cherokees themselves, much reflection; and that they are now prepared, on behalf of their people, to sign a treaty which will effect the objects contemplated. They desire to restore peace and harmony among the Cherokee people by the use of all means within their power; and the only effective mode at present to effect this object is the security given by this treaty for the safety of life, liberty, and property, in the Cherokee country. This treaty will now be signed by the representatives of the old western Cherokee nation, and it will be preserved in *good faith* by their people, as all compacts have been by them, entered into with the United States.

The undersigned, having now apprized the honorable board of some of the prominent causes which have induced them to sign this treaty, and that they have given up many points at the earnest solicitation and advice of their counsel, who have always been their steady friends, and urged a firm reliance in the *justice* of the United States, it now becomes their duty to say to this honorable board, and to their people at home, that they will always consider whatever money may be paid their people, under the provisions of the present treaty, will be received as a *payment for their country west of the Mississippi, which they now relinquish to the whole na-*

tion. They do not acquiesce in the decision of the commissioners that their country became the property of the whole Cherokee people, by virtue of the treaty of 1828, or any subsequent treaty; and, should the treaty now proposed fail, from any cause, it is their fixed determination to re-assert their exclusive right to the country secured to them by the treaty of 1833, and to prosecute their claim to the same by all proper and lawful means in the power of a feeble and oppressed people.

The undersigned respectfully ask that this letter be communicated to the President and Senate of the United States, with your other proceedings.

JOHN L. McCOY,
ELLIS F. PHILLIPS,
JOHN BROWN,
WM. DUTCH, his + mark,
RICHARD DREW, his + mark.
Delegation of Old Settlers.

M.

The Cherokee Affairs, carefully and impartially examined. Three separate and distinct parties shown to exist in the Cherokee country; their origin, progress, and present condition exhibited. Each party complaining of the violation of treaty stipulations by the government of the United States, by which they allege they have sustained heavy losses, and for which they now claim indemnity.

The undersigned have resolved upon the performance of a laborious task. They have undertaken to present a faithful history of the Cherokee tribe of Indians, from the date of their first treaty with the United States, in 1785, up to the present time. In tracing this history, the whole of the difficulties among the Cherokees, which have for many years rendered them a divided and miserable people, will be fully, fearlessly and impartially discussed. The questions involved in this discussion are highly important, and of deep interest, not only to the Indians now contending for their rights, but to the United States and to humanity. They have undergone a careful and laborious investigation, the result of which is now submitted to the consideration of the Executive, of Congress, and of the people of the United States. We earnestly and solemnly invoke an attentive hearing. The picture we shall draw will be worth looking at. It will be drawn from realities.

Division of the old Cherokee nation into several parties. Their designation.

There exists, at the present time, three distinct and separate parties in the Cherokee country, each petitioning the government of the United States for a redress of grievances. The first are

called the "old settlers," formerly composing the "Cherokee nation west of the Mississippi river." The second is known as the "treaty party," composed of the remnant of those who signed and approved the treaty of 1835, which ceded to the United States all the country owned and occupied by the Cherokees east of the Mississippi, and from which circumstance it derives its name. The third is called the "anti-treaty," or "Ross party," who have obtained possession of the Cherokee country and government, under the operation of the treaty 1835, although they always repudiated that treaty, declared it a coercive measure, negotiated with a minority of the nation, and a "fraud practised upon the Cherokee people and upon the United States." These three parties are represented by deputations now at the seat of government. The grievances complained of have heretofore been submitted to the President, Secretary of War, and Congress, by themselves and by their counsel; and the undersigned will now in as succinct a manner as possible, to make it intelligible, present a plain, fair, unbiassed statement of the whole case, taken from various treaties, memorials and other public documents, bearing upon the issue. The pretensions and claims of the parties shall be taken up in the order in which they are above placed.

1st.—*The origin of the Cherokee nation west of the Mississippi, giving the causes which led to their separation from the parent tribe, their struggles in the west, the proud elevation they attained as a civilized nation, with the causes which produced their present deplorable condition, and gave rise to their present claim against the United States.*

The "old settlers" or "western Cherokees" still claim to be an independent nation, separate and apart from the present ruling government in the Cherokee country. They date their national existence as far back as the year 1817, when they formally and officially separated from their brethren east of the Mississippi, and removed to, and organized a nation west of that river, under the provisions of a treaty concluded that year, between three parties in interest, named in the caption, "Commissioners Plenipotentiary of the United States of America," "Chiefs, head-men and warriors of the Cherokee nation east of the Mississippi river," and "Chiefs, head-men and warriors of the Cherokees on the Arkansas river." The nation, constituted by this treaty, has been officially recognised as the "Cherokee nation west of the Mississippi river," both by the government of the United States and the eastern Cherokee nation from that time up to the year 1839, when its functions were suspended and its existence afterwards terminated, by the operation of the treaty of 1835, to which it was not a party.

This nation, under the name of the "Cherokee nation west of the Mississippi," had made two treaties with the United States, after its separation from the eastern nation by the treaty of 1817. The first of these treaties was concluded on the 6th of May, 1828, by which the country then held by the western Cherokees, within

the present limits of Arkansas, was exchanged for a country further west, estimated to contain seven millions of acres of land, with a perpetual outlet west of the same, extending to the extreme western limits of the United States. This cession or exchange of lands was confirmed by another treaty compact, concluded between the same parties, at Fort Gibson, in February, 1833; and this is the last treaty to which the western Cherokees, now known as the "old settlers," were a party. The country thus purchased and paid for by them was forcibly taken from their possession, under the provisions of the treaty of 1835, concluded between the United States and the eastern Cherokees, in which the western nation had no voice. It is upon this allegation, involving breach of faith on the part of the United States, that the claim of the old settlers is based. They claim from the United States a restitution of their country, their government, and their rights, of which they were thus lawlessly dispossessed; and, if this cannot now be effected to the full extent, (as it is presumed it cannot, without inflicting injury upon others and involving the United States in great expense and difficulty,) they then demand payment and indemnity for the country from which they were forcibly ejected and the losses they have sustained in consequence of that dispossession.

In order to obtain a clear and full understanding upon this subject, it becomes necessary to ascertain the origin of the Cherokee nation west, and trace the history and proceedings of the two nations up to the present time. To attain this object we have carefully examined all the public documents throwing light upon the matter, and from the gleanings of our country's history we will now proceed to the discharge of the delicate duty we have undertaken.

At the end of our revolutionary struggle, by which we obtained a glorious national existence, the Cherokee tribe of Indians were found in proud and absolute possession of the most fertile, valuable, and beautiful portions of the country, lying between the Ohio and the shores of the Atlantic, bordering upon the Carolinas and Georgia. In speaking of this once powerful race, as they existed long before we became a nation, and at the time their soil was first trodden by the foot of a white man, our own historian says, among other glowing descriptions, in regard to them: "The mountaineers of aboriginal America were the Cherokees, who occupied the upper valley of the Tennessee river, as far west as the Muscle Shoals and the highlands of Carolina, Georgia, and Alabama, the most picturesque, most beautiful, and most salubrious region east of the Mississippi."

The first treaty upon record, between the United States and this nation, was concluded at Hopewell, on the Kennowee, on the 28th November, 1785. This treaty was entered into at the termination of a protracted and sanguinary war between the contracting parties. It provides for an exchange of prisoners and the restoration of a peace, which has remained unbroken ever since. By the ninth article the concession is made to the United States, of right, by Congress, to pass laws regulating trade and intercourse with them,

and of managing all their affairs. In the language of the same article, this right is conceded, "for the benefit and comfort of the Indians, and for the prevention of injuries and oppressions on the part of the citizens or the Indians." The 12th article of the same treaty promises as follows: "That the Indians may have full confidence in the justice of the United States respecting their interests, they shall have the right to send a deputy of their choice, whenever they think fit, to Congress." The boundary lines between the Cherokees and the citizens of the United States are also designated by this treaty.

The next treaty was concluded at the Indian council ground on the bank of the Holsten, on the 2d July, 1791. This treaty provides for an exchange of prisoners still held in captivity by both parties. It establishes the permanent boundary lines between their countries; and the United States agree to pay, beside other considerations, an annuity to the Cherokees thereafter of one thousand dollars, for the extinguishment of their title to all their former country, lying beyond a certain described line. The 7th article, then, makes the following important and imposing guaranty of title, viz: "The United States solemnly guaranty to the Cherokee nation all their lands not hereby ceded!!!" It will be a difficult task for the United States to show that this solemn pledge has not been inhumanly, shamefully violated. Fourteen treaties were afterwards held with the Cherokees east of the Mississippi, under various pretences; under the operation of which their country gradually diminished, and slice after slice was added to the domain of their professing guardian, until the whole, at one fell swoop, was forcibly wrested from them by the treaty of 1835! Yes, forcibly—it is not too strong a term.

A number of Cherokees became dissatisfied with some of the conditions of the treaty of Hopewell, and soon after its ratification started in search of a new country. They embarked in pirogues on the Tennessee, and descended that river, the Ohio and Mississippi, to the mouth of the St. Francis, in the Spanish province of Louisiana, now the State of Arkansas, and made their first settlement on the banks of that stream. Thus, these first emigrants to the west not only separated themselves from their own nation, but withdrew beyond the limits of the United States, and secured an occupant title to the soil, long before the United States obtained any claim to the lands within that province. This, then, may be called the rigin, the germ of the Cherokee nation west of the Mississippi river.

From that period up to the year 1808, the settlement in the west gradually gained accession and strength by emigration from the nation in the east, and began to extend along the borders of Arkansas and White rivers. In that year, 1808, the eastern nation, having already become divided, under the designation of "Upper and Lower towns," sent deputations to Washington as representatives of both parties, who submitted a proposition to the President of the United States for a formal and final separation of the tribe, by "establishing a division line between the Upper and Lower

towns." The one party desiring to remain east of the Mississippi, and begin the "establishment of fixed laws and regular government," and become "cultivators of the soil." The other party expressed their anxiety to remove west of the Mississippi, and select a country there, which they would accept in exchange for their portion of the country east. These propositions were assented to by the President, and in his reply thereto, made on the 9th day of January, 1809, he authorizes those who desire to remove west, to "send an exploring expedition to reconnoitre the country on the Arkansas and White rivers;" and he promised when this party had "found a country suiting the emigrants and not claimed by other Indians," the United States would "arrange with them the exchange of that, for a just portion of the country they leave, and to a part of which, proportioned to their numbers, they have a right."

This is a pledge given to that portion of the Cherokee nation now known as the "old settlers," by President Jefferson, in the year 1809, which induced the establishment of a nation west of the Mississippi, as the exclusive owners of a country of equal extent and value to that to be relinquished to the United States, east of that river.

The "exploring party," thus authorized, proceeded to the country designated by the President, and selected lands lying between the Arkansas and White rivers, which are now within the limits of the State of Arkansas. Here they were joined by the pioneers, who had long before left their old home for the west, and settlements were immediately commenced, under sanction of the promise made by the President. Emigration steadily continued up to the year 1817, when the "Western Cherokees" assumed a national character, and on the 8th of July in that year, a treaty was entered into and concluded by and between General Andrew Jackson, Governor Joseph McMinn, and General David Merriweather, commissioners, &c., on behalf of the United States, and deputies from the Cherokee nation east, and the Cherokees west of the Mississippi river. By reference to this treaty, it will be found that the final division of the tribe, previously agreed upon, was consummated; and in the 3d, 4th, and 5th articles, stipulations are inserted, that thereafter they should hold their property separately, under the names of the "Cherokee nation east of the Mississippi river" and the "Cherokee nation west of the Mississippi river." That the western nation ceded to the United States their portion of the country east, for an equal quantity of land in the west, in pursuance of the mutual understanding had at their council with the President in 1809, is plainly declared in the 5th article of this agreement, as follows, viz: "The United States bind themselves, in exchange for the lands ceded in the first and second articles hereof, to give to that part of the Cherokee nation on the Arkansas as much land on said river and White river as they have, or may hereafter receive from the Cherokee nation, east of the Mississippi, acre for acre, as the just portion due that part of the nation on the Arkansas, agreeably to their numbers," &c. The same article then

goes on to describe the boundaries of the lands thus given to the western Cherokees in exchange for their lands east, relinquished to the United States as above stated.

That the treaty of 1817 was made to carry into effect, in an efficient and binding manner, the arrangement agreed upon in 1808–'9, is fully set forth in the preamble to that instrument. At the time it was negotiated, the number of Cherokees already settled in the Arkansas country was estimated as exceeding two thousand souls —and in order to ascertain what number intended to emigrate and join the western nation, it is stipulated in the 3d article, "that a census shall be taken of the whole Cherokee nation, during the month of June, in the year of our Lord 1818, in the following manner, viz: That the census of those on the east side of the Mississippi river, who declare their intention of removing, shall be taken by a commissioner appointed by the President of the United States, and a commissioner appointed by the Cherokees on the Arkansas river; and the census of the Cherokees on the Arkansas river, and those removing there, and who at that time declare their intention of removing there, shall be taken by a commissioner appointed by the President of the United States, and one appointed by the Cherokees east of Mississippi river.—[See Treaty of 1817, Book of Indian Treaties, page 209, *et seq.*]

We have been thus particular in referring to the treaty of 1817, as it is the first official or binding compact entered into between the United States and the Cherokees, for the establishment of a *nation* west of the Mississippi. It appears manifest, from a careful examination of this instrument, that two nations of Cherokees were here established, by what must be considered a supreme law of the land. The country in the east was divided—that part of the nation who determined to separate from the tribe and remove west, agreed that the portion of the country to which they were entitled, should be ceded to the United States; to which their brethren, who had determined to remain in their old country, assented. The cession was accordingly made, and the "Western nation" was paid *in lands* lying between the Arkansas and White rivers! Not a dollar of money was received for the country relinquished—it was merely an exchange of lands, *acre* for *acre!*

Thus was the agreement of 1809, for a separation of the tribe of Cherokees, and a division of their common property, put in legal form. The stipulation, that a census should be taken of all who had emigrated, or intended to remove west, and become citizens of the Western nation, in the month of June, 1818, clearly shows that the "country on the Arkansas" was not intended to be given to the whole nation, but to that portion of it who had removed there, or who would express their intention of removing there, on or before a certain day! It was then agreed that the common property of the whole should be equitably divided, and thereafter held separately.

The treaty of 1817 was concluded on the 8th of July in that year, and the Western Cherokees were active in inducing their friends to join them in their new country, before the time expi

for taking the census. The government of the United States had its agents vigorously employed in promoting the same object, but they were actuated by different motives. This treaty was looked upon as the ground-work of the future removal of the Indian population from the south and southwestern States, beyond the Mississippi; and every means were used by the government to induce emigration under its provisions. On the other hand, the great majority of the tribe, who had determined to remain permanently in possession of their country east, and establish a regular government, manifested much dissatisfaction at the practical effect of that treaty; and the period for taking the census being deferred to a late date, through the interference of the United States, a delegation of "Eastern Cherokees" were sent to Washington in the winter of 1818, for the purpose of finally adjusting the terms of the treaty of the preceding year, without taking the census!!!

The Hon. John C. Calhoun was then Secretary of War, and he entered into a convention with this delegation, by which a treaty was concluded on the 27th February, 1819. [See Treaty Book, page 265.] In this treaty or convention, the Western Cherokees were not represented—it was negotiated and concluded between the United States and the eastern nation exclusively. But the separate and independent character and rights of the western nation were distinctly recognized and preserved. The preamble sets forth the intentions of the eastern Cherokees in applying for this new arrangement. It dispenses with taking the census, and makes another cession of land to the United States, which was to be considered and taken in full for the proportion to which they might be entitled under the operation of the treaty of 1817. The first article makes this cession, and concludes as follows: "And it is further understood and agreed by the said parties, that the lands hereby ceded by the Cherokee nation, are in full satisfaction of all claims which the United States have on them, on account of the cession, to a part of their nation who have, or may hereafter emigrate to the Arkansas; and this treaty is a final adjustment of that of the 8th of July, 1817. The 5th article provides for the running of the boundary lines of the ceded lands—for securing the residue of the country to the Cherokees east, and for annulling certain leases which had been made under the treaty of 8th July, 1817. The 6th article stipulates as follows:

"The contracting parties agree that the annuity to the Cherokee nation shall be paid, two-thirds to the Cherokees east of the Mississippi, and one-third to the Cherokees west of that river, as it is estimated that those who have emigrated, and have enrolled for emigration, constitute one-third of the whole nation; but, if the Cherokees west of the Mississippi object to this distribution, of which due notice shall be given them, before the expiration of one year after the ratification of this treaty, then the census, solely for distributing the annuity, shall be taken at such times and in such manner as the President of the United States may designate."

Here is a clear and unequivocal declaration made by the United States and the Cherokee nation east, that there was, at that time,

a nation west of the Mississippi—that the property they formerly held in common was now divided; and that the share allotted to each could not be increased or diminished, if the "Cherokees west of the Mississippi" assented to the terms thus proposed. The western nation did consent—the taking of the census was dispensed with—the territory assigned and conveyed to them in Arkansas was surveyed and marked off, embracing about four millions two hundred thousand acres; with the pledge from the government of the United States that the lands west of their western boundary should be attached thereto, as soon as they could be purchased from the aboriginal occupants. The annuities were divided as agreed upon, and one-third paid to the nation west—they had a separate agent, appointed by the United States—and from that time they were treated as a distinct and separate nation, holding its own property, until their rights were invaded, and their country forcibly and illegally taken possession of, under the provisions of the treaty of 1835, negotiated by the United States and the eastern Cherokee nation, neither of whom had any right, title, or interest in or to the country or government, of which they thus recklessly disposed. All the correspondence between the parties to the treaties of 1817, 1819, and 1828, held anterior to the treaty of 1835, confirms the construction we have put upon these compacts, and conclusively proves that the treaty of 1819 was regarded as a final measure, and that thereafter the eastern nnd western Cherokees were to be separate nations, entirely independent of each other.

After the separation thus consummated, both communities rapidly advanced in the arts of civilized life. The western Cherokees, upon their first settlement in the then wilderness of the far west, were compelled to encounter difficulties and dangers which would have appalled, disheartened, and defeated the advance of men less brave and adventurous, and inured to hardships. The wild and warlike Osages, and other kindred tribes, looked upon them as the vanguard of a civilized population; and the horrors of a frontier life, so vividly described in the earliest period of American history, were experienced by the sturdy Cherokee pioneers, with all their train of heart-rending consequences. Murder, and conflagration, and robbery, showed themselves in every advanced settlement made by these people. The rough covering was scarcely placed on the humble cabin, when its inmates were told their doom by the startling crack of the rifle, and the horrid yell of the savages surrounding it, in the still hour of the night. Thus every Cherokee, of necessity, became an armed warrior. They had formed a determination to relinquish their former habits, and become a civilized people, depending upon the productions of the soil and their own labor for subsistence; and they rebuilt their cabins and tilled their ground, in little bands, with their women and children, bearing arms near them. They drove the Osages back from their settlements, after a succession of bloody battles. In these various actions, the celebrated Indian Captain Tuchee, (Captain Dutch,) now in this city, one of the old settler delegation, performed deeds of daring and intrepidity which might be placed on the page of

history with thrilling effect—they are such as would mark him as a renowned warrior in any part of Christendom. But this is not our present design. We have adverted thus briefly to the early settlement of the western Cherokees, simply to show how hardly these people earned, and how well they deserved the country which they occupied, even if they had not purchased and paid for it! There are several distinguished gentlemen, now members of the United States Senate, who will say we have not drawn a fictitious picture—but that we have spoken the truth.

In order to understand fully the locality of the western Cherokees, after their boundaries were marked out to them under the provisions of the treaty of 1817, it is necessary to state that their western line was made to extend in that direction as far as the title of the indigenous tribes had been extinguished by the United States. The country lying immediately on their western border was owned and occupied by the Osages. These people, known and called "Great and Little Osages," entered into numerous treaties of peace with their Cherokee neighbors, promising indemnity for losses occasioned by their various depredations, which were as often broken by them. At length they agreed to dispose of their lands adjoining the Cherokees on the west, as well to enable the United States to comply with previous promises made to the Cherokees with regard to the outlet west, as to satisfy the Cherokees in full for all outrages and depredations committed upon their persons and property; and to indemnify certain citizens of the United States for property taken from them by predatory bands of the Osage nations. This arrangement was first made by Major Lovely, United States Cherokee agent, and was afterwards embraced in a treaty concluded by General Clark, Governor of Missouri, and superintendant of Indian affairs, at St. Louis, on the 25th September, 1818. The first article of this treaty makes the cession to the United States, the boundaries of which are described as follows, viz: "Beginning at the Arkansas river, at where the present Osage boundary line strikes the river at Frog bayou; then up the Arkansas and Verdigris, to the falls of Verdigris river; thence eastwardly to the Osage boundary line, at a point twenty leagues north from the Arkansas river; and with that line to the place of beginning." [See page 249, vol. of Indian Treaties.]

The country embraced within this cession is generally known as the "Lovely purchase." It was intended by all parties, before the treaty, that it was to be annexed to and form part of the Cherokee country. The Cherokees claimed it as a matter of right. That they never should thereafter be surrounded by white people, as promised by President Jefferson in 1809, was the great inducement which first separated them from the home of their fathers, and led them beyond the Mississipppi river. This promise was frequently repeated by succeeding administrations; and the "Lovely purchase" was made in 1818, to give the "western Cherokees" their country "without limits to the west," as promised them by the President. It was estimated that this tract contained about three millions of acres, and gave the Cherokees an addition to their ori-

ginal survey, which increased their country, calculated for farming purposes, to about seven millions of acres, with the free and unmolested possession of all the country west to the Mexican line.

In defiance of this government pledge, however, white people immediately commenced a rapid settlement upon the lands embraced within the Lovely purchase; and the Cherokees again petitioned the President of the United States for a redemption of his promise. They were answered by the President, through the Secretary of War, on the 8th of October, 1821. Their claim was acknowledged, and all white settlers were peremptorily ordered to be removed by military force, if necessary; and they were removed, and the land taken possession of by the Cherokees.

As we have said, both nations of Cherokees were now rapidly advancing in civilization, and exchanging the garb and weapons of the hunter for the implements of the farmer. In the year 1824 the nation west adopted a written constitution, and established a regular government, composed of executive, judicial, and legislative departments. They had already become a united, contented, and prosperous people. But they were not long destined to remain so in their present position, for the reasons which we shall now briefly relate.

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[*The causes which led to the treaty of* 1828.]

The eastern Cherokees, considering the treaty of 1819 a final adjustment of their territorial rights and limits, resolutely opposed any further cession of their lands. They enacted laws, providing for the infliction of heavy penalties on any citizen or citizens of their nation who should thereafter attempt by word or deed to sanction such cession; and also for the prevention of further emigration to the Arkansas country under existing treaties. In 1822 they were informed that a commission was to be appointed by the United States, at the instance of the governor and legislature of Georgia, with a view of holding a treaty with them, (the Cherokees,) for the purpose of extinguishing their title to lands within the chartered limits of Georgia; and the head chiefs of the nation requested the district judges to ascertain the opinions and sentiments of all the people upon the subject. These judges made their report to the national committee and council, which says, the people had declared "unanimously, and with one voice and determination, to hold no treaties with any commissioners of the United States to make any cession of lands, being resolved not to dispose of even one foot of ground." On the 23d of October, 1822, the committee and council sanctioned the decision, as follows, viz:

"*Be it therefore known and remembered*, That we, the undersigned, members of the national committee and council, after maturely deliberating upon the subject, resolve, &c., That the chiefs of the Cherokee nation will not meet any commissioner of the United States to hold a treaty with them on the subject of making

cession of lands, the property of the Cherokee nation, as we are determined hereafter not to make any cession of lands, having not more than sufficient for our own nation and posterity."

In the year 1827 the eastern Cherokees established a regular form of government, similar to that of the western nation, and determined to maintain it in defiance of the violent opposition of the governor and legislature of Georgia. They passed a law, pronouncing sentence of death upon any Cherokee who should propose or attempt to dispose of any lands belonging to the nation. Various other laws of a similar character were enacted, which plainly indicated that the cession of land, made by the treaty of 1819, was the last the eastern Cherokees would consent to. In the mean time, the legislature and people of Georgia were unceasing in their efforts to force the Indians from the lands within her limits. The United States had entered into a compact with that State on the 24th of April, 1802, by which the latter ceded to the former all that portion of territory which now forms the States of Mississippi and Alabama. The consideration to be given on the part of the United States was $1,250,000, with an obligation to extinguish the Indian title to all the lands within the limits of Georgia, whenever the same could be peaceably done, and on reasonable terms." This compact, with voluminous proceedings had, on its reference to Congress in 1822, will be found in the 11th vol. Executive doc. No. 1, 2d sess. 17th Cong., and in the documents of several succeeding sessions. Georgia never ceased to insist upon and to demand the fulfilment of that compact on the part of the United States, and to draw still tighter the cord of oppression around the Cherokees for the purpose of forcing them to abandon the country. It would fill a volume to cite even the published proceedings upon this subject; and we will reserve a further exposition until we come to investigate the causes which induced the organization of the "Treaty party" among the Cherokees, and the conduct and downfall of that party.

Whilst the excitement was progressing and gaining strength in the east, and the Cherokees within the limits of Georgia were struggling to maintain their position, the people of Arkansas manifested a determination to extend their territorial limits. Her citizens, about the year 1826, re-commenced their settlements upon the "Lovely purchase;" and in the year 1828, the western Cherokees found an organized county, under the jurisdiction of Arkansas, on their western border. Thus they were "*surrounded by a white population*," contrary to the solemn promises to the contrary, repeatedly made by the Executive of the United States. The United States were anxious to avert the impending collision between the territory of Arkansas and these people; and it became necessary to induce them to relinquish part of the country secured to them by the treaties of 1817 and 1819, and remove further west. These considerations gave rise to the treaty of 1828, by which the "Cherokee nation west of the Mississippi" ceded to the United States the surveyed portion of their country, being upwards of four millions of acres, with an additional strip from the "Lovely purchase,"

containing nearly a million more; and had the title "*guarantied to them,*" for another country, which was in fact only *part of their original outlet.*

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[*Treaty of* 1828—*A "Cherokee nation west of the Mississippi" fully recognised.*]

We solicit the earnest attention of the Executive and Congress to the form and conditions of this treaty. It was concluded at the city of Washington on the 6th of May, 1828, and the contracting parties are designated in its caption as follows, viz: "James Barbour, Secretary of War, being especially authorized therefor by the President of the United States, and the undersigned chiefs and head men of the Cherokee nation of Indians west of the Mississippi, they being duly authorized and empowered by their nation."

In our opinion the parties to this treaty are so clearly defined that it might be deemed unnecessary to proceed further to prove the identity and existence of the "western Cherokees" as a separate and independent nation, having no connexion with any other tribe. Language cannot be made stronger to establish this fact. By this treaty we have the unqualified recognition, by the United States, of a nation of Cherokee Indians west of the Mississippi, possessing full power and authority to convey and receive title to a country. This nation was the sole Indian party to the treaty of 1828. The "Cherokee nation east of the Mississippi" had no voice in it, individually or as a nation. What, then, were the objects and inducements which led to this compact, and what were its conditions?

The answer to the first part of this inquiry has already been partially given. At the period of this negotiation the western Cherokees were in possession of a country, marked by boundary lines, and estimated to contain about four millions two hundred thousand acres, with the promise of all the country west of it, for which they had already paid. This country was conveyed and secured to them by the treaties of 1817 and 1819, as already shown. The preamble to the treaty of 1828 avows the objects of both contracting parties in bringing it into existence, so far as it was deemed necessary or politic to avow them. The United States professed to be governed solely by a desire to secure to the western Cherokees a permanent and unmolested home, during all future time, embracing a country large enough to subsist the people belonging to their nation as well as such of their brethren in the east as might desire to join them. The Cherokee party, in assigning their inducements, do not join in the invitation to emigration, but maintain their claim to their present country, and all the country lying west of it. In referring to the evil effects of remaining under the presence of a white population, and the degradation and misery resulting from it, they remind the United States government of its failure or inability to comply with its previous solemn promises in the following language: "The Cherokees being anxious to avoid such conse-

quences, and yet not questioning their right to their lands in Arkansas, as secured to them by treaty, and resting upon the pledges given by the President of the United States and the Secretary of War, of March, 1818, and 8th October, 1821, in regard to the outlet west, and as may be seen on referring to the records of the War Department,* &c. These pledges assured the "western Cherokees" that no white population should ever be placed on their western border; but they should have a free and an unmolested use of all the country west as far as the sovereignty of the United States extended.

Now, let us see what are the terms and considerations of this treaty. The first article provides as follows, viz: "A line shall be run, commencing on Red river, at the point where the eastern Choctaw line strikes said river, and run due north with said line to the river Arkansas; thence in a direct line to the southwest corner of Missouri." Thus was the western boundary line of Arkansas established. The country, then ceded to the United States, which had been secured to the western Cherokees under the treaty of 1817 and 1819, laid upon the east side of that line. The country they received in exchange for this cession lies immediately upon the west of it; and is in fact only a portion of their own land, with part of the outlet, the unmolested use and possession of which had been virtually pledged to them by the United States before the treaty of 1817 was concluded—afterwards in the year 1818, and reiterated in the year 1821. It is conveyed to them by the 2d article of the treaty, as follows:

"The United States agree to possess the Cherokees, and to guaranty it to them forever, and that guarantee is hereby solemnly pledged, of seven millions of acres of land, to be bounded as follows:" [Here the boundaries are described, and the same article continues:] "In addition to the seven millions of acres thus provided for and bounded, the United States further guarantee to the Cherokee nation a perpetual outlet west, and a free and unmolested use of all the country lying west of the western boundary of the above described limits, and as far west as the sovereignty of the United States and their right of soil extends."

The 3d article of the same treaty provides for running the lines of the above cession without delay, and also for the removal of all white persons from the ceded country, and to keep such persons "with a population of any other sort, unacceptable to the Cherokees," from this country in future.

The 4th article provides for the appointment of agents to value the improvements left by the Cherokees in the country ceded to the United States, and for the sale of the agency property, the proceeds of which to be applied to the erection of a grist and saw mill, for the use of the Cherokees, on the lands they were to receive in exchange for the lands they were surrendering to the United States.

The 5th article contains another positive, unequivocal, and absolute declaration that the United States were then contracting with the "Cherokee nation west of the Mississippi" only. It com-

mences as follows: "It is further agreed that the United States, in consideration of the inconvenience and trouble attending the removal, and on account of the reduced value of a great portion of the lands herein ceded to the Cherokees, as compared with that of those in Arkansas, which were made theirs by the treaty of 1817, and convention of 1819, will pay to the Cherokees, immediately after their removal, which shall be within fourteen months of the date of this agreement, the sum of fifty thousand dollars," &c. The article then provides for the appropriation of $2,000, for three years, toward defraying the cost and trouble of recovering stock which might stray back after their removal. Also $8,760 for "spoliations committed upon them" (the Cherokees) "by the Osages and citizens of the United States." One thousand dollars for the use of Thomas Graves, a Cherokee, for losses and personal sufferings. Five hundred dollars for the use of George Guess, the inventor of the Cherokee alphabet. An annuity " of $2,000 to the Cherokees for ten years, to be expended in the education of their children, in their own country, in letters and the mechanic arts;" and " one thousand dollars toward the purchase of a printing press and types."

The above article gives us the amount of what has been called *boot money*, to be paid by the United States to the " Cherokees," in this exchange of countries. Can a doubt arise as to who were intended to be designated by the appellation of " the Cherokees," so frequently mentioned in this article? There cannot. They were the people who owned " the lands in Arkansas, made theirs by the treaty of 1817 and the convention of 1819!" They were the people then residing upon the Arkansas country, and who agreed "to leave it within fourteen months," from and after the date of the treaty! They were the people who had claims " for spoliations committed on them by the Osages and citizens of the United States," and were to " be paid for improvements they were about to abandon, and for the expenses of recovering their lost stock." They were nationally and individually the " Cherokee nation of Indians west of the Mississippi," who, under the name of "an exchange of lands," ceded to the United States the eastern portion of their country, conveyed to them by the treaties of 1817 and 1819, for and in consideration of seven millions of acres, to be surveyed and solemnly guarantied to them from a part of their own land and the outlet, to which, long before this treaty, they had acquired a title of unmolested occupancy! The United States agree to give these people "boot money" in the consummation of this bargain, assigning, as a reason, that the country conveyed to the Cherokees was inferior in value to the country obtained from them in exchange! And this "boot money," as shown by the 5th article, amounts only to $87,260, a considerable portion of which is to be paid to individuals, all of whom then resided upon the ceded land, and were constituents of the nation west of the Mississippi river.

The 6th article contains another consideration, on the part of the United States, which is highly important to the claim of the

western Cherokees for the lands conveyed to them by the treaty of 1828. It is there agreed that when the Cherokees "may wish to lay off their lands and own them individually, a surveyor shall be sent to make the survey at the cost of the United States." Can anything be adduced more clearly to establish the exclusive title of the Cherokees then in Arkansas to the lands then secured to them? Surely not; for, if they had chosen to avail themselves of the above stipulation, and have their lands surveyed, apportioned, and allotted to them individually, they might have done so immediately after the ratification of that treaty; and thus a bar would have been forever placed against the assignment, even to voluntary emigrants, of any more public domain belonging to the Cherokee nation!!! And now comes the consideration paid by the Cherokee party to the contract for the lands, money, and other benefits secured to them by the United States, in the several stipulations above cited. It forms the 7th article, and reads as follows:

"ART. 7. The chiefs and head men of the Cherokee nation aforesaid, for and in consideration of the foregoing stipulations and provisions, do hereby agree, in the name and behalf of their nation, to give up, and they do hereby surrender to the United States, and agree to leave the same within fourteen months, as hereinbefore stipulated, all the lands to which they are entitled to in Arkansas, and which were secured to them by the treaty of the 8th of January, 1817, and the convention of the 27th of Febauary, 1819."

The 8th article then provides for further emigration to the new country from the nation east of the Mississippi, which has been construed into an invitation extended to the whole eastern nation, by those who have attempted to justify the outrages committed under the authority of the treaty of 1835. The western and eastern Cherokees, however, always repudiated this construction, when the question was heretofore raised, and the article cannot be tortured so as to admit of any interpretation that would give emigrants to the Cherokee country any more rights or privileges than are guarantied to foreigners, emigrating to this country, by the naturalization laws of the United States. The "western Cherokee nation" had secured a large and unembarrassed country, and it was willing to strengthen itself by emigrants from the parent nation, who might choose to join it; but not one foot of land is promised to emigrants by this article, either as a gratuity or a grant, warranted by the treaty. All the inducements to emigration are offered by the United States; and even the promises they made were suspended by our government in June, 1833, and all the Cherokees who emigrated or were removed to the west, after that period, were removed under the provisions of the treaty of 1835!!

But let us examine further into this subject, and ascertain the views and opinions entertained and publicly expressed by the nations east and west, in reference to the construction attempted to be placed upon the 8th article of the treaty of 1828, soon after its ratification. We have already shown that this treaty was forced upon the parties, by the demands of Georgia, which the govern-

ment of the United States could no longer resist, and the determination manifested by the government and people of Arkansas to extend their territorial limits over and beyond a portion of the country assigned to the western Cherokees by the treaties of 1817 and 1819. It was, as we have said, in consequence of this unfortunate state of things that the invitation was inserted in the treaty of 1828, to induce voluntary emigration to the west. The Cherokees, who lived within the limits of Georgia, were offered, not only "a good rifle, blanket, brass kettle, and five pounds of tobacco," but each individual carrying with him four emigrants was also offered a bonus of fifty dollars; and they were further to have all the expenses of their removal paid, and to be supplied one year after their removal in the west. All this, however, was offered by the United States, and had but little effect in producing emigration. The eastern Cherokees remained firm in their determination to adhere to the country of their ancestors, and the western Cherokees protested against the reception of emigrants, under the clause of the treaty above referred to, unless they brought with them their proportionate share of their annuities and secured an additional quantity of land, in proportion to the share they were entitled to in the east, under the provisions of the treaty of 1817 and convention of 1819. We will cite some of the numerous documents, explanatory of the intention and meaning of the Indian party to the compact of 1828, and also of the views entertained by the eastern Cherokees upon the same question.

On the 1st of December, 1831, John Jolly, principal chief of the western Cherokees, addressed a letter to the President of the United States, communicating the proceedings of a council of his people, and the appointment of a delegation to visit Washington, in reference to the provisions of the treaty of 1828. The 1st and 2d clauses of the instructions to this delegation, direct them to "endeavor to have secured to this nation that portion of the annuity, which shall hereafter be sent and paid to this nation, according to the proportion of emigrants which have arrived here since the last treaty," &c. And also to "secure to this nation a proportion of any advantage which may hereafter accrue to the old nation, according to the number of emigrants which may be received in this nation since the treaty of 1828." The 6th and last clause of these instructions reads as follows: "The delegation are authorized to act in all things of interest to this nation as they think best, in making and signing treaties, and the same will be binding upon the nation, unless the same should extend to the selling or exchanging land, or altering the lines of this nation, specied by the treaty of 1828, all which is expressly forbidden." This paper will be found at page 276–7, in the 3d volume of Senate documents, No. 512, 1st session 23d Congress, numbered on the back of the volume "22" and "9," and designated in the title page, "correspondence on the subject of the emigration of Indians, between the 30th November, 1831, and 27th December, 1833."

At page 275 of same document, will be found the letter of the delegation above referred to, addressed to the Secretary of War,

and dated Washington city, March 26, 1832, making known the object of their visit. The delegation in this appeal speak boldly upon the rights of the western Cherokees, as attempted to be interfered with under the terms of the treaty of 1828. In speaking of the emigration produced by that treaty, they say: "Although the treaty of 6th May, 1828, does not contain in it any stipulation guarantying to us any additional lands to that described in the second article, it is, nevertheless, true that while the negotiation was pending which produced said treaty, the government *made repeated promises to our brethren that their lands should be extended in proportion to the number that might emigrate.* Part of the delegation, to whom these promises were made, are now here, and are willing to testify to the fact. It must certainly appear reasonable and just that, unless a promise of this kind had been made, they would have refused to receive them into their country, and allow them to participate in the enjoyment of all those privileges which they had been possessed with under former stipulations, without receiving, in some way, an equivalent!"

The above appeal was enforced in an argument possessed of much strength and eloquence, addressed to the Secretary of War by John W. Flowers, counsellor of the western Cherokees, who was one of the signers of the treaty of 1828; and in a similar one, addressed to Judge Martin, William S. Coody, and John Ridge, delegates of the eastern Cherokees, then in Washington. [Same vol., page 316, et seq.] In anticipation of the application contained in the letter above cited, from the western delegation, Martin, Coody and Ridge wrote to the Secretary of War on the 24th March, 1832, and there take the broad ground that the eastern nation cannot, in any way, be affected by the treaty of 1828, to which it was not a party. They say, in defence of their position: "We cannot believe that such proposition will meet the approbation of the government, taking into consideration the manner in which the emigration originated. By a treaty not made with our nation, inducements are offered for the removal of the eastern Cherokees to the Arkansas, and the government stipulates to pay for the improvements which they abandon. A small portion of our citizens, under that arrangement, have emigrated, and a few more are about to emigrate; but taken altogether, they bear but a small proportion to the whole population remaining." [Same document, page 274.]

The letter of John W. Flowers, addressed to the eastern delegation, is dated April 26, 1832. The reply to it is dated April 27, the next day, and is signed by Martin and Ridge, two of the delegates. Their answer is short, emphatic, and to the point. Two nations, separate and distinct from each other, are shown to exist among the Cherokees—the rights of neither of whom could be impaired by the acts of the other. In speaking of the wrongs complained of by the western Cherokees, as inflicted by the emigration produced by the treaty of 1828, the eastern delegation says: "This system of emigration has been adopted without the consent and contrary to the wishes of the nation we have the honor to repre-

sent. Therefore it is that we cannot perform, in this matter, any other act than to sympathise at the grievances of the late emigrants; and if they have been, to their injury, inveigled to measures on the fair promises of the United States, it is to that government they are to look for justice! In regard to any misunderstanding as to the intentions of the United States and your nation, of the designs and bearings of the treaty of 1828, the proper explanations thereto, it is obvious, attaches to the contracting parties!!" [Same document, page 320]

Various other acts of both nations, taken in connexion with the proceedings and correspondence arising thereon, between them and the United States, corroborate the foregoing declarations of the Cherokee parties, and incontestibly prove that the treaty of 1828 conveyed a country to the western nation exclusively. That nation protested against the reception of the emigrants from the eastern nation, then not exceeding two hundred, under its provisions, unless they procured an "acquisition of lands" and a "proportionate share of the annuities, to which they were entitled in the east." The eastern nation protests against such arrangement, accruing under the provisions of a treaty "to which it was not a party." John Ridge, who was afterwards the leading spirit in carrying into effect the treaty of 1835, then declared that the eastern nation could do no more than "sympathize at the grievances" of the few who had left it under the provisions of the treaty of 1828! If, then, it was not contemplated that one or two hundred volunteer emigrants from the east could be received, as equal owners of the country west, without paying an "equivalent," it surely could not have been intended that the whole eastern nation could be placed upon it as joint owners with the western nation, as implied by the preamble to the second article of the treaty of December, 1835. It is worthy of observation, however, that John Ridge did not sign that treaty! His name appears to the supplement agreed upon in Washington, on the 1st of March, 1836, but not to the original treaty.

We have done, for the present, with the treaty of 1828, which has been inhumanly used as a weapon to deprive the "western Cherokee nation" of a country. It was signed by eight delegates, then in Washington, who are therein called "chiefs of the delegation;" among whom is John Rogers, who is now here as one of the present representatives of the old "western nation." It was ratified on the 28th day of May, 1828, by the Senate of the United States, with a proviso that it should not be construed so as to interfere with any lands assigned to the Creek nation or any other tribes of Indians by former treaties. [See treaty book, page 422, *et seq.*]

[*A brief explanation, showing that the "western Cherokee nation" were entitled to seven millions of acres of land as a farming country, at the time the treaty of* 1828 *was concluded—the causes that produced the treaty of* 1833, *and the conditions of that compact, which confirms the title of the western Cherokees to a country containing seven millions of acres, the boundaries of which are thereby permanently established—with a perpetual outlet west.*]

Before we proceed to the examination of the treaty of 1833, and ascertain the causes which led to it, we deem it proper, in order to avoid misapprehension, to offer a few words of explanation in reference to the apparent difference in the quantity of land assigned to the Cherokees west by the treaties of 1817 and 1828. It will be recollected that the country of the western Cherokees was bounded on the east, north and south, by the treaty of 1817, and extended west for quantity—which country was supposed to contain four million two hundred thousand acres. In the year 1818, the country immediately on the west of this tract was purchased from the Osages. And in the year 1819, a large tract of country was relinquished by the Cherokees east of the Mississippi, in addition to that ceded by the treaty of 1817, which was for the benefit of the Cherokees who had determined to join the western nation; and a tract of land, equal in extent to that last relinquished in the east, was to be added to the country in the west, as surveyed under the treaty of 1817! It must also be remembered that a considerable tract of country lies between the western boundary of the Cherokees, as contemplated by the treaty of 1817, and their eastern line as now established. Their eastern boundary was fixed by the treaty of 1817, but the western boundary was not run. It was intended, however, to extend it to the Osage line, which struck the Arkansas river at Frog bayou. This line, as settled by the Osage treaties of 1808 and 1818, runs a directly north and south course from old Fort Clark, on the Missouri, five miles above Fire Prairie, and strikes the Arkansas at Frog bayou. The distance, in a direct east and west course, from this point on the Arkansas to the eastern line of the Cherokee nation, at Fort Smith, as established by the treaty of 1828, is thirteen miles. The distance between the Arkansas river and Missouri line, at the nearest point between the lines above designated, is seventy-seven miles. This large and valuable tract of land, therefore, was relinquished to the United States by that treaty, in addition to the country lying east of it, and west of the line designated by the treaty of 1817! And it was then, in 1828, ascertained and believed that the whole country relinquished by the "western Cherokees," in Arkansas, would amount to seven millions of acres! But whether it would do so or not is immaterial to the present issue. The exchange of lands was made by treaty without allusion to the number of acres relinquished by the Cherokee party to the bargain. Reference is made to the inferior quality of the country given in exchange to these people for their lands in Arkansas; and if an additional quantity was pretended to be given to them, the inference is plain that it

was intended to make up for the difference in the value of the two countries—as the "boot money" given to them on their national account, by the 5th article, would have added but a fraction more than one cent per acre!!!

There is an important fact connected with the extinguishment of the Indian title to all the lands within the State of Arkansas on the north of the Arkansas river, of part of Missouri, and the whole of the present Cherokee country, which we desire to bring before the government. It will be seen that the desire of a portion of the Cherokee nation to remove west, procured that relinquishment at a price merely nominal. In the year 1808 the Cherokees make their first practical attempt to procure a country west, and in the autumn of that year deputations visited Washington for that purpose. As we have already shewn, in October of the same year a treaty was made with the Osages, by which the following extensive tract of country was ceded to the United States, viz: "Beginning at Fort Clark on the Missouri, five miles above Fire Prairie, and running thence a due south course to the river Arkansas and down the same to the Mississippi, hereby ceding and relinquishing forever to the United States all the lands which lie east of said line, and north of the southwardly bank of the said Arkansas river, and all lands situated northwardly of the Missouri river!" Mark the dates! In January 1809, President Jefferson made a promise to the Cherokees of part of these lands in exchange for the country east, and authorized an exploring party to go and examine them. The Osage treaty was then ratified by the Senate on the 10th of April, 1810! In March, 1818, upon the complaints of the Cherokees, the promise was formally made to them of an extension of their country west, with the "outlet;" and on the 25th September of that year, another treaty was made with the Osages, by which their title to all that portion of their country was extinguished, known as the "Lovely purchase." Again, on the 2d June, 1825, another treaty was made with the Osages, by which all their lands west of the Cherokee country were ceded, and this cleared the way for the outlet which was guarantied to the western Cherokees by the treaty of 1828.

Thus it will be seen that every purchase of lands from the Osage tribe was predicated upon a contemplated cession to the "western Cherokee nation," in payment for the lands relinquished by them east of the Mississippi! The treaties with the Quapaws, by which that tribe relinquished its title to lands on both sides of Arkansas river, were concluded in August, 1818, and November, 1824. But these lands did not extend as far west as the Cherokee country.

[*The treaty of* 1833 *between the United States and the "Cherokee nation west of the Mississippi." It conveys a country to that nation, by the United States, for a valuable consideration paid. That treaty has never been annulled or changed by the contracting parties, and the ceded country now belongs to that nation, under the guaranty then given by the United States.*]

We will now examine the provisions of the treaty of February, 1833. The preamble quotes the 2d article of the treaty of the 6th May, 1828, and also the amendment made to that treaty by the Senate, restricting the boundaries of the country conveyed to the Cherokees, to a non-interference with any lands which had been previously assigned to the Creek Indians. It also alleges that certain encroachments had been committed by these people upon the lands of each other; and for the purpose of settling these difficulties in an amicable manner, and permanently establishing the boundaries of the Cherokee and Creek countries, treaties were concluded with both nations on the same day, to wit: the 14th February, 1833. [See treaty book, page 561, et seq.]

Soon after the western Cherokees settled in their new country under the provisions of the treaty of 1828, it was found that the boundaries agreed upon did interfere with some lands claimed by the Creek Indians; and complaints were made by both parties, charging encroachments upon the lands of each other. In consequence of these complaints three commissioners were appointed in the year 1832, to examine and adjust these difficulties, and settle permanently the boundaries of both countries. A treaty was concluded between these commissioners and the "Cherokee nation west" at Fort Gibson, on the 14th day of February, 1833; and this is the last treaty to which the western Cherokees are a party! They have never ceased to reject any and every arrangement entered into between the United States and other Cherokees, affecting the rights and interests guarantied to them by its provisions. This treaty again distinguishes the parties contracting, as "Commissioners on the part of the United States, and the chiefs and head men of the Cherokee nation west of the Mississippi, they being duly authorized and empowered by their nation."

The preamble to this treaty, after stating that the Creeks and Cherokees had met in council and mutually agreed upon their boundary lines, introduces the first article as follows: "Now, therefore, the United States, on the one part, and the chiefs and head men of the Cherokee nation of Indians west of the Mississippi, on the other part, agree as follows:

"Art. 1. The United States agree to possess the Cherokees, and to guaranty to them forever, and that guaranty is hereby pledged, of seven millions of acres of land, to be bounded as follows:" [Here the boundary lines are described, and the outlet secured under the guaranty of the treaty of 1828, in addition to the 7,000,000 of acres.] And the article concludes with the following solemn promise made on behalf of the United States: "And letters patent shall be issued by the United States as soon as practicable for the land hereby guarantied."

The 2d article relinquishes to the United States all the lands ceded to the western Cherokees by the treaty of 1828, not embraced within the boundaries fixed in this treaty, which is called "supplementary" to the former. Several other important changes are made, varying the provisions of the treaty of 1828, but the contracting parties are maintained throughout, as the "United States and the Cherokee nation west of the Mississippi." The treaty was ratified on the 12th day of April, 1834, and on that day became a supreme law of the land. It has never since been annulled or altered by any act to which the "Cherokee nation of Indians west of the Mississippi" was a party.

The signers to it, on the part of the Cherokees, are "John Jolly, Black Coat and Walter Webber, principal chiefs," and "John Rogers, president committee, and Glass, president council." The three chiefs elected as one principal and two assistant chiefs, constituted the executive branch of the Cherokee government west of the Mississippi. The committee and council constituted the two branches of the national legislature. Here then, again, in their new country, did the exclusive power and authority of the western Cherokee nation manifest itself. The boundaries of a country were agreed upon, and secured to them forever. The eastern nation had no representative present, even to witness this important transaction. Their people had no part in any of the negotiations by which the western Cherokees acquired this country, and manifested no interest with regard to the result. Their rights and interests could not be injured by any arrangement made by the treaty of 1828, or that of 1833; and hence it is folly to say that they could be entitled to any of the benefits resulting from them, at the expense of the western Cherokees.

The three chiefs, Jolly, Black Coat and Webber, who signed the treaty on behalf of their nation, were among the first settlers in the old nation in Arkansas. They are no more. Glass, who signed the treaty as president of the council, is also dead—and John Rogers, who signed it as president of the committee, is the only surviving signer of that compact. He is now in this city as one of the delegation, appointed by the scattered and broken down remnants of the old western Cherokee nation, for the purpose of establishing their exclusive right to the country secured to them by the various treaty stipulations cited in this narrative; the boundaries of which are definitely and permanently established by the treaty of 1833.

We beseech the President of the United States, and the representatives of the people, whose duty it is to preserve inviolate our treaty stipulations, to examine carefully the conditions of this treay. It was concluded, to be sure, with an Indian nation, and such compacts have heretofore been sneered at as official lullabys sung to ignorant savages, by those whom law and custom had made their guardians. But that day, we trust, has passed forever. Indian treaties are deserving of as much consideration from us as treaties concluded with any other nations upon earth. They are made in pursuance of law, sanctioned by the constitution of the

United States. They are entered into in the same manner, and pass through the same solemnity of form, in their ratification by the President and Senate of the United States, as do treaties negotiated with nations more civilized, though not more virtuous. The treaty of 1833 was thus negotiated and ratified, and we say to those who have the power to control our destinies, [against our will, if they choose to exercise force,] to examine well its stipulations, and then seriously answer this question: Does not that treaty secure as good a title to the "Cherokee nation west of the Mississippi," by the United States, as was secured to the United States by France in the treaty made for the purchase of Louisiana? Let it be borne in mind that the Cherokees were not the aboriginal settlers upon the country, the title to which was now guarantied to them! They had purchased it from the United States, and paid full value for it!

The treaty concluded with the Creek nation on the same day furnishes important testimony for the Cherokees. The second article of that treaty, fixing the boundary lines of the nation, commences thus: "The United States hereby agree, by and with the consent of the Creek and Cherokee delegates, this day obtained, that the Muscogee or Creek country, west of the Mississippi, shall be bounded as follows:" [Here follows a description of the boundaries of the Creek nation, as they now exist.] And now to show the distinction between the Cherokee and Creek owners of the countries, for which they were then fixing the boundary lines, we refer to the 4th article of the treaty made by the latter, which reads as follows: "It is hereby mutually understood and agreed between the contracting parties to this treaty, that the land assigned to the Muscogee Indians, by the 2d article thereof, shall be taken and considered as the property of the whole Muscogee or Creek nation, as well those now residing upon the land as the great body of said nation who still remain upon the east side of the Mississippi river." No such provision was inserted, or could be introduced, into the Cherokee treaty!!! That treaty conveys the title, absolutely and without reservation, to the Cherokee nation, then owners and occupants of the country. It was ratified by the President and Senate of the United States on the 21st day of April, 1834. What, then, was the character and condition of the Indian party to it? We place the answer under the following heads, viz:

1st. It was the "Cherokee nation of Indians west of the Mississippi," organized under the provisions of the treaty of 1817.

2d. By the treaty of 1819, concluded between the eastern Cherokees and the United States, for the purpose of finally settling some important questions left undetermined by the treaty of 1817, this western nation obtained, by a partition of the country originally held by the whole tribe, the right to one-third of the country and one-third of the annuities or national funds belonging to the old nation anterior to the treaty last referred to. The share of country allotted to the western Cherokees by this deed of partition, was exchanged by them for a country west of the Mississippi river, which was marked by boundary lines.

3d. In the year 1828, the country acquired, as above stated, was ceded to the United States by the Cherokee owners, who obtained in payment therefor a country still further west, containing seven millions of acres, described by metes and bounds, with a perpetual outlet west as far as the sovereignty of the United States and their right of soil extend.

4th. In the year 1833, by another treaty concluded between the same parties, for the purpose of definitely and permanently establishing certain boundary lines, the above cession, with a slight change in these lines, was confirmed; and letters patent were promised by the United States for the country thus conveyed, as follows: "And letters patent shall be issued by the United States for the land hereby guarantied."

Thus have we portrayed the condition of the "Cherokee nation of Indians west of the Mississippi," on the 12th day of April, 1834. Their title to the entire country, above designated, was on that day solemnly ratified and confirmed. Not a link in the whole chain was found broken or out of place; not one has ever since been broken or impaired by any act of the "western Cherokees;" and these people are this day the rightful owners of that country, under any rule, either of law or equity, which can be applied to contest that title. But it is in relation to their condition in 1834 we intend to speak at present. Look at the picture they then presented. After more than a quarter of a century's toil and privation, they had secured the absolute title to a large, fertile, valuable country, with a healthy and delightful climate. They had purchased and paid for this country to the United States, whose warranty was given to protect them in it forever. They had already cultivated large farms and built comfortable houses. Their farms were well stocked with horses, cattle, and useful domestic animals of every kind. They were, in truth, an industrious, thrifty and well provided people, whose civilization, industrious habits, general intelligence, and prosperous appearance, placed them upon an equality, in all these respects, with the settlers upon any new country on earth. They were at peace and harmony among themselves, and with their white neighbors. The stranger who visited them, or passed through their country, had the hand of friendship and hospitality extended to him.

This was the condition and appearance presented by the "western Cherokee nation," now called "old settlers," when they were despoiled of their country, under the operation of the treaty of 1845.

[*A brief review of some of the leading points in the foregoing history.—Showing the estimation in which the title of Indians to their lands was held by the British crown, and afterwards by this government.—The mode by which the title can be extinguished.—Bringing our narrative to the treaty of* 1835.]

There is one universally acknowledged principle which recognises but two ways of acquiring from the Indians a title to their lands; that is, by purchase, under the constitution and laws, or by force. The latter was never resorted to by the British government; but, on the contrary, a title in the Indians was recognised and held sacred by the British crown, up to the war of the revolution. As late as the year 1763, the king of England issued a proclamation concerning the rights and immunities of the American Indians, from which we will make one or two extracts. They read as follows:

"Whereas it is just and reasonable, and essential to our interests, that the several nations or tribes of Indians with whom we are connected, and who live under our protection, should not be molested or disturbed in the possession of such parts of our dominions and territories as, not having been ceded or purchased by us, are reserved to them as their hunting grounds: We do therefore declare it to be our royal will and pleasure, that no governor of any of our colonies do presume for the present, and until our further pleasure be known, to grant warrants of survey, or pass patents for any lands whatever, which, not having been ceded to and purchased by us as aforesaid, are reserved to the said Indians, or any of them."

The next clause of the proclamation asserts the same principle in reference to the rights of the Indians, which was afterwards adopted by our government, and embraced in the intercourse law of 1802. It ordains as follows:

"To the end that the Indians may be convinced of our justice and determined resolution to remove all reasonable cause of discontent, we do, with the advice of our privy council, strictly enjoin and require that no private person do presume to make any purchase from the said Indians; but that if at any time any of said Indians should be inclined to dispose of their said lands, the same shall be purchased only for us, and in our name, at some public meeting or assembly of the said Indians, to be held for that purpose by the governor of our colony within which they shall lie."

In the condition above indicated we found the Indians at the time we became an independent nation, as England's conqueror. The Indian question was then one of great importance to the infant republic; and "treaties of peace and amity" between our government and the several tribes of Indians were early negotiated. The fourth Indian treaty upon record, and the first negotiated with the Cherokees, was concluded in November, 1785, at Hopewell, on the Kenowee. It was done at the termination of a protracted and bloody war; and the first and second articles provide for a restoration of prisoners, and negroes, and other property taken during

the war by either of the contracting parties. The fourth article designates the boundaries of the Cherokee country. The fifth article provides for the prevention of white settlements upon their lands, and for the removal of any who may be already settled there. The sixth and seventh articles contain further promises and guarantees to the Cherokees, that they shall be secure in the occupancy of their lands. The ninth article reads as follows: "For the benefit and comfort of the Indians, and for the prevention of injuries and oppressions on the part of the citizens or Indians, the United States in Congress assembled shall have the whole and exclusive right of regulating the trade with the Indians, and managing all their affairs, in such a manner as they think proper!" We wish this article to be distinctly marked for future comment. It is the first concession on the part of the Cherokees to the United States, obtained sixty years ago, under the specious declaration of the then victorious party, that the right conceded was "for the benefit and comfort of the Indians, and for the prevention of injuries and oppressions!" The twelfth article of the same treaty is in the following words: "That the Indians may have full confidence in the justice of the United States respecting their interests, they shall have the right to send a deputy to Congress!"

The second treaty was negotiated with the Cherokees on the banks of the Holston, in July, 1791; the second article of which secures their pledge to the United States that they "will not hold any treaty with any foreign power, individual State, or individuals of any State." The fourth article extinguishes the Indian title to the lands beyond certain designated limits; recognises and permanently fixes the boundary lines between the United States and Cherokees, and stipulates as follows:

"In order to preclude forever all disputes relative to the said boundary, the same shall be ascertained and marked plainly by three persons appointed on the part of the United States, and three Cherokees on the part of their nation."

After this cession and agreement upon the establishment of permanent boundaries between the parties, we find the following solemn pledge on behalf of the United States:

"Art. 7. The United States solemnly guarantee to the Cherokee nation all their lands not hereby ceded!!!

"Art. 8. If any citizen of the United States, or other person not being an Indian, shall settle on any of the Cherokee lands, such person shall forfeit the protection of the United States, and the Cherokees may punish him or not, as they please!!!"

This treaty contains altogether fifteen articles, recognising in letter and spirit the Cherokee nation as in possession of the title of original occupancy, which cannot be infringed upon by any State in the Union, or by the United States government itself, unless by treaty or convention entered into pursuant to the constitution. The treaty was ratified by the President and Senate of the United States on the 11th November, 1791; and the guaranty of title it contains had never been repealed or annulled, but was in existence in the year 1835, when the New Echota treaty was con-

cluded! After the treaty of Holston, twelve other treaties were negotiated between the United States and the Cherokee nation east of the Mississippi prior to the treaty of 1835—nearly all of which take an "additional slip of land from the Indians," but contain the same everlasting guaranty for the residue. Some of these treaties are worth presenting to the public eye; but for want of space we shall pass over them at this time, and come to the one immediately preceding that of New Echota. This treaty or convention was concluded at the city of Washington in the year 1819, between the Secretary of War (Mr. Calhoun) on behalf of the United States and the Cherokee nation east of the Mississippi river. It is a final adjustment of the conditions of the treaty of 1817, by which the old Cherokee nation agreed to separate and become two distinct and several nations, to be afterwards designated as the "Cherokee nation east of the Mississippi," and the "Cherokee nation west of the Mississippi river." The treaty of 1817 was negotiated with the whole original nation, and made a large cession of land in exchange for the land to be given to the western Cherokees in Arkansas. The convention of 1819 was negotiated with the eastern nation alone, by which more land is ceded to the United States, and an arrangement entered into for their permanent occupation of their remaining country, as cultivators of the soil, under the solemn guaranty pledged by the treaty of 1791. In this treaty, all the unsettled business of the Cherokees is discussed and settled, and the United States bind themselves to fulfil the compact in the following clear and emphatic manner:

"ART. 5. It is agreed that such boundary lines as may be necessary to designate the lands ceded by the first article of this treaty, may be run by a commissioner or commissioners, to be appointed by the President of the United States, who shall be accompanied by such commissioners as the Cherokees may appoint, due notice thereof to be given to the nation; and that the leases which have been made under the treaty of the 8th of July, 1817, of land lying within the portion of country reserved to the Cherokees to be void; and that all white people who have intruded, or may hereafter intrude, on the lands reserved for the Cherokees, shall be removed by the United States, and proceeded against according to the provisions of the act passed 30th March, 1802, entitled 'An act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers.' "

We wish it distinctly to be borne in mind that the treaty of 1819, just cited, was the last treaty concluded between the United States and the Cherokee nation east, until the completion of the celebrated treaty of 1835–'6; and that it stood upon your statute book as the supreme law of the land up to that period. Every other treaty stipulation we have quoted remained at that time unrepealed and unaltered. The provisions of the intercourse law of 1802, referred to in the 5th article of the treaty of 1819, were still in existence as incorporated in the law of 1834. Up to the passage of the last mentioned law, the act of 1802 was the standard law "regulating

our trade and intercourse with the Indian tribes," and its provisions were not altered or amended, or its words changed, on any subject we propose to discuss. Section 12th of this law provides as follows:

"That no purchase, grant, lease, or other conveyance of lands, or any other title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the constitution."

Another clause of the same section makes it a penal offence in any person not employed by the United States to attempt to negotiate such treaties, and, as if Congress at an early period anticipated the assumption and exercise of improper power thereafter by the States, the same section of the law is made to contain the following proviso:

"That it may be lawful for the agent or agents of any State who may be present at any treaty held with the Indians, under authority of the United States, in the presence and with the approbation of the commissioners of the United States appointed to hold the same, to propose to and adjust with the Indians the compensation to be made for their claim to lands within such State, to be extinguished by treaty!"

We solicit especial attention to this provision of the intercourse law, as the conduct of several of the States, which was not only tamely but criminally overlooked by the government of the United States, inflicted many of the evils complained of by the Cherokees, long anterior to the treaty of 1835, and has produced distraction and hatred among these people; to allay which time has battled in vain, and which can only be allayed by the strong arm of this government, holding the scales of justice in its hand. We also ask that the positive prohibition contained in the second article of the treaty of 1791, against the Cherokees holding treaties with "any individual State," may be considered, with the provisions of the intercourse law, and then refer back to the king of England's proclamation, which we have quoted, wherein he proclaims as follows: "We, therefore, declare it to be our royal will and pleasure, that no governor of any of our colonies do presume to grant warrants of survey, or pass patents for any lands, &c., which, not having been ceded to or purchased by us, as aforesaid, are reserved to the said Indians, or any of them."

We have now, in as brief a manner as possible to be understood, presented the condition of the Cherokees, from the time they were under British dominion up to the treaty of 1835, so far as their rights were concerned under law and treaty stipulations. The proclamation of the king shows in what estimation those rights were held by the English crown; and the early manifestations of our chief magistrates and law-makers, as shown by the law and treaty stipulations we have quoted, exhibit a fixed determination to protect the Indians in their rights. The intercourse law, under which all our Indian treaties have been made, and the treaties with the

Cherokees, by which their title to the country they occupied was recognised and established, were enacted and concluded early in our national existence. They were ordinances and compacts entered into when our relations with the Indians, found in possession of millions of the choicest acres of the conquered country, were fresh and exciting; and the intentions of our government and people towards them were pure, kind and disinterested. The Indian title was then held sacred, and the mode was prescribed by which alone it could be extinguished. With regard to the Indians generally this was done, and their persons and property protected by an act of the national legislature; but with the Cherokees there were special agreements made in this respect in their treaty compacts, and their title to the lands reserved to them solemnly "guarantied to their people forever."

We have now come to the threshold of the Cherokee treaty of 1835, with all the provisions of the several previous treaties, holding up the solemn guaranty from the United States to the Cherokees that they shall be protected in the title to their lands forever, and that no "individual State, or individuals of a State, shall molest them or intrude upon their territory!" These provisions were in full force when commissioners were sent to negotiate the treaty of 1835. In what condition were the Cherokees found at that time? Why, the United States had failed to make good its guaranty in in every respect. The Cherokee country was swarming with intruders, inflicting every species of persecution upon the Indians. Georgia had long previously disregarded the existing treaties between the United States and the Cherokees, and asserted the right to jurisdiction over and to the actual possession by her citizens of all the lands secured to the Cherokees by treaty, lying within the chartered limits of that State. In the year 1822, she set at defiance the provisions of the treaty of 1817 and 1819, granting reservation to certain Cherokees. Under an act of the State she caused these reservations, then in the occupancy of the reservees, to be laid out in lots and drawn for by lottery by her own citizens. In this way all the Cherokees who obtained reservations under treaty stipulations in the State of Georgia were forcibly ejected. By another act of the legislature of that State, passed in December, 1829, the jurisdiction of her State courts was extended over the whole country occupied by the Cherokees within her limits; and in June, 1830, the laws, customs and usages of the Cherokee nation were declared inoperative, null and void. In the same year the legislature further enacted that the whole country occupied by the Cherokees, within the boundaries claimed as the chartered limits of the State, should be surveyed and distributed among her citizens. Thus were the Cherokees, harassed and perplexed, compelled to employ counsel and enter into the most vexatious law-suits—the United States all the while remaining passive spectators of the unrighteous contest, and suffering their most sacred treaty obligations to be violated. At length, even the legal redress resorted to by the Cherokees was taken from them by the enactment of a law by the legislature, prohibiting the courts of Georgia from holding jurisdiction over or

take cognizance of any case wherein a citizen of the Cherokee nation was a party.

We ask the President of the United States—we ask every man of feeling and just conceptions in the United States, to look at this picture. You have read the description given by your historian (Bancroft) of the Cherokees and their country, when first seen by the white man. You have read the various treaty stipulations by which their country was purchased from them, section by section, and the ready guaranty given for the residue, until they parted with the last acre they could spare, as an agricultural people, by the treaty of 1819. Now listen to what the commissioner sent to negotiate with them in 1835, for the last remnant of their country, has to say, for the purpose of inducing them to entirely abandon the home of their fathers. Instead of saying to them, "You have entered into numerous treaty compacts with the United States, by which you have ceded millions of acres of your choicest lands! You have complied with your part of these compacts, by a prompt relinquishment of these lands to the purchaser! We will now faithfully, if it has been tardily done, comply with our part of the several compacts, or if we have not the power to do so, without violating our faith pledged to the States, we will make you ample remuneration." Instead of thus addressing the Cherokees, we say, Mr. Commissioner Schermerhorn, in his celebrated talk to the council convened at Running Water council ground, on the 20th of July, 1835, after reading to them a draft of a treaty already prepared, and urging the futility of a refusal of the terms proposed, warns them against such a refusal as follows:

"And now, let me ask you, what have you to gain by delaying this matter? Certainly, nothing. You have tried various ways, for several years past, and every year your situation has been growing worse and worse. Every overture for negotiation that has been rejected by you, and every exertion on your part to be reinstated into your former rights and privileges, and to expel the whites from among you, and to escape the force of the laws of the States over you, has not only failed to bring you the relief promised you by your lawyers, and counsellors, and chiefs; but it has been followed by more new and insupportable laws and measures. Your principal men have all been turned out of their possessions, or have become tenants at will to the citizens of Georgia. If you continue to cast away the very liberal and generous offers of the government now made to you, you will even lose the sympathies of some of your best friends. You cannot mistake the policy of Georgia. She is determined to get rid of her Indian population, and she will soon legislate you out of the country, by granting your possessions to her citizens, who claim the fee of your lands. And then where will you go? To Alabama or Tennessee? You know the whites there are as thick on your lands as they are in Georgia; and all places surrounded by the emigrants are occupied by white men, as they have been in Georgia. You need not be surprised if, in such a case, the other States were to pass laws that they would not permit the Indians from Georgia to settle within

their bounds. Be not deceived. The citizens of the States of Alabama, Tennessee, and North Carolina, are as anxious to get rid of you as Georgia; and they lie still, and hold back because Georgia is fighting their battles as well as her own, with you; and this you will find, when the crisis arrives to which I have alluded; for they have, all of them, already extended their laws over you. Let me say to you, these evils are now at the door. If you reject these overtures, you may look for them soon."

This is an extract, and fair sample of the opening talk of the commissioner sent in the year 1835 by our government to treat with the Cherokees for a relinquishment of all their lands east of the Mississippi river. The "benefit and comfort of the Indians," and the promise to protect them from "injuries and oppressions," so paternally made in the year 1785, when our young government obtained by treaty the first foothold upon Cherokee lands, were lost in the mist of time—entirely forgotten. The Cherokees were now told that the United States were unable to protect them as she had stipulated in her treaties; and that their only safety was in the entire abandonment of the country. Some of the chiefs and best and purest men of the country, who had buffeted with their oppressors for years, seeing the awful precipice upon which they stood, and judging from the past and the present that relief was out of the question, agreed to sell their country. Another, and the largest portion of the people, composed of some men equally good, still clinging to the belief that some good angel would come to the rescue, absolutely refused to part with it. But the colossal power of this government prevailed; and a treaty was concluded with the minority party on the 29th day of December, 1835, by which the last Indian of the Cherokee tribe east of the Mississippi was stripped of his birthright.

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[*A minute inquiry into the provisions of the treaty of* 1835.—*Was the country east purchased for money, or was an exchange of lands also contemplated?—Can the eastern Cherokees claim any title to the country west, except the* 800,000 *acres conveyed to them by the treaty of* 1835?]

It now becomes our duty to show how the "Cherokee nation of Indians west of the Mississippi" became dispossessed of the country solemnly guarantied to them by a treaty ratified in the constitutional form by the President and Senate of the United States.

On the 29th of December, 1835, after a long and tedious negotiation, a treaty was concluded between the United States and the Cherokees east of the Mississippi, at New Echota, Georgia, by which the United States obtained possession of all the lands owned by that nation; in consideration the United States agreed to pay, as the full value of the same, five millions of dollars. This value was fixed by a resolution of the Senate of the United States, under

a proposition submitted to that body by John Ross, and other members of a Cherokee delegation, on the 28th of February, 1835, as will be seen by reference to the preamble to this treaty, [Treaty Book, page 633.] The first article then makes the cession as follows: "The Cherokee nation hereby cede, relinquish, and convey to the United States all the lands owned, claimed, or possessed by them east of the Mississippi river, and hereby release all their claims upon the U. States for spoliations of every kind for and in consideration of the sum of five millions of dollars," &c. The same article then raises a question as to whether the Senate intended to include the payment of "spoliations" out of the Cherokee fund, when they advised "that a sum not exceeding five millions of dollars be paid to the Cherokee Indians, for all their lands and possessions east of the Mississippi river." This question is settled by the 2d and 3d articles of the supplement to the treaty concluded at Washington on the 1st day of March, 1836. [Treaty Book, pp 646–7.] It is here declared that the five millions of dollars awarded by the Senate was intended as the value of the lands ceded by the Cherokees, and was not subject to the payments entailed upon that fund by the first article of the original treaty. One fact is here clearly established, which is highly important in the settlement of conflicting interests involved in the reference of this question at present. It is here shown that both contracting parties considered the five millions of dollars as the full price to be paid for the country of the Cherokees on the east of the Mississippi river!! that this was a purchase and sale, and the consideration was fixed, first by the Senate and afterwards agreed upon between the contracting parties. When this consideration, which was $5,000,000, was paid by the United States, they could claim an acquittance in full on account of the purchase of the Cherokee lands east of the Mississippi. The country belonging to the western Cherokees, described in the 2d article of this treaty, therefore, forms no part of the consideration involved in this sale and purchase!! Such assumption is not implied even by the article itself. Let us examine it:

"Art. 2. Whereas, by the treaty of May 6, 1828, and the supplementary treaty thereto of February 14, 1833, with the Cherokees west of the Mississippi, the United States guarantied and secured to be conveyed by patent to the Cherokee nation of Indians the following tract of country: [Here the boundaries of the cession made to the western Cherokees by the treaty of 1833, are quoted as described in that treaty.] Immediately following this description of the boundaries of the country, in which neither of the contracting parties had any interest, the Cherokee party are made to say, "it is apprehended by the Cherokees that in the above cession there is not contained a sufficient quantity of land for the accommodation of the whole nation on their removal west of the Mississippi, the United States, in consideration of the sum of five hundred thousand dollars, therefore hereby covenant and agree to convey to the said Indians and their descendants, by patent in fee simple, the following additional tract of land, &c., 'which tract is estimated to contain eight hundred thousand acres.'"

The 3d article then stipulates on the part of the United States as follows: "The United States also agree that the lands above ceded by the treaty of February 14, 1833, including the outlet and those ceded by this treaty, shall be included in one patent, executed to the Cherokee nation of Indians by the President of the United States, according to the provisions of the act of May 28, 1830." Is not this a most singular proceeding? Here are two parties disposing of a country in which neither had one iota of interest! The eastern Cherokees had separated from the western Cherokees, and divided the common property by the treaty of 1817 and convention of 1819, and therefore did not presume to have a claim upon the country west of the Mississippi. The United States parted with all their interest in this country by the treaty of 1828, when they received for it a country in exchange within the limits of Arkansas; and by the treaty of 1833, which permanently established the boundary lines of the country, then assigned and guarantied forever to the "Cherokee nation west of the Mississippi river, for which a patent was to be issued as soon as practicable." If there was deception or fraud intended to be perpetrated by the transfer of land under the treaty of 1835, the participation in it by the parties to that treaty was mutual; for both knew that they had no title to or interest in the country belonging to the Cherokees west of the Mississippi, which was here disposed of as belonging to the nation east, as well as to the nation west of that river.

The Cherokee nation east of the Mississippi river do not, therefore, under the provisions of the treaty of 1835, present any legal or equitable claim to the country west of the Mississippi, which they now occupy. That country was not given to them as part of the consideration to be paid for the country they relinquished to the United States by that treaty. The only land they acquired a legal or equitable title to under its provisions, is the 800,000 acres, for which they agreed to pay, and did pay, five hundred thousand dollars. There could not have been an exchange of lands contemplated by the treaty of 1835, for the Cherokees, headed by John Ross, principal chief, agreed to receive the value of their lands east in money; and for the only lands legally conveyed to them by the United States on the west side of the Mississippi, they were afterwards charged $500,000! The act of Congress of May, 1830, under which the title is promised by the 3d article of this treaty, only confers the power upon the President to effect an "exchange of lands with the Indians east of the Mississippi river for lands west of that river." It does not confer the power to purchase with money. If the treaty of 1835 was based upon the provisions of this act, then the United States were bound to furnish the Cherokees, with whom they were treating, a country west of the Mississippi. But in no event could the country of the western Cherokees be taken for this purpose, (until purchased from them,) without violating all existing law and treaty stipulations, and even the proviso to the 7th section of this very act!

It appears, however, from the treaty itself, and the correspondence between the contracting parties during several years before

its conclusion, that an exchange of land was not intended; but that a sum in money should be given for the country east, and that the Cherokees should purchase a country for themselves west of the Mississippi. If this be the case, then the country at present held by the eastern Cherokees, the "Ross nation," on the west of the Mississippi, containing seven millions of acres, will be a clear gain to these people, if the United States now agree to purchase it for their use from the rightful owners, the "old western Cherokee nation." The "eastern Cherokees" have paid for the additional tract of 800,000 acres, conveyed by the treaty of 1835; but for the seven millions of acres they have not paid one dollar, either to the United States by the sale of lands under that compact, or subsequently, to the western Cherokees. The condition of these two nations under this construction, therefore, stands thus: The Cherokees (known as the "Cherokee nation west of the Mississippi" anterior to the treaty of 1835) accepted of their share of the lands held in common on the east of the Mississippi, and by the treaty of 1817 exchanged it with the United States for a country of equal extent west of the Mississippi. This exchange was confirmed by the treaty of 1819, which added considerably to the cession, and all the property previously held in common by the eastern and western Cherokees was thereafter to be held separately. The western Cherokees received no money for their lands in the east, thus relinquished to the United States. They were paid entirely with lands in the west, to be given acre for acre, according to the quantity ascertained to have been relinquished! Within the country thus acquired the western Cherokees erected a national government; and, in the year 1828, in their national character, exchanged this country for a country still further west. They were the pioneers who planted the first mark of civilization in the wilderness then allotted to them, having fought their way against the Osages, and other wild tribes, who committed numerous depredations upon their property and murdered their people. In the year 1833 these hardy "Old Settlers" had acquired by their perseverance, industry, and fidelity, a large territory, as a permanent and peaceful abode for themselves and their posterity. In that year they permanently settled their boundary lines by treaty; and were promised a patent, conveying a fee simple title for the country thus acquired, "as soon after the ratification of the treaty as practicable." What did they witness two years afterwards? Why, they found a treaty entered into by the United States and the Cherokee nation east of the Mississippi, by which their country was considered the common property of the whole re-united nation, and disposed of accordingly. They therefore were left without remuneration in money or lands for their share of the common property, which they relinquished in the east by the treaty of 1817 and convention of 1819!! The eastern Cherokees proposed by the treaty of 1819, to which the western Cherokees agreed, that the country east should be divided into three equal parts, and the first would accept of two and the latter one part as their share of the common property. This division was made by treaty, and the western Cherokees obtained a

country in the west for their share. The eastern Cherokees in the mean time sell their two-thirds for money, and then claim another division of the original one-third given to the western Cherokees!!! And the latter were forced to submit to this unrighteous proceeding by the operations of the treaty of 1835.

Let us now look at the condition of the Cherokees east of the Mississippi, under the provisions of that treaty. They were to receive, under its stipulations, for their share of the common property retained east of the Mississippi, under the provisions of the "treaty of 1817 and convention of 1819," the sum of five millions of dollars! And in addition to this, they were permitted to take possession of the country previously secured to the Cherokees west of the Mississippi, without paying any value therefor! Is this right?—is it just?—will it be tolerated? If the country claimed by the Cherokees west of the Mississippi as their exclusive property, belonged to the whole nation as it existed before the treaty of 1819, then the treaty of 1828, negotiated with the western Cherokees solely, can have no binding effect, and the land in Arkansas still belongs to the Cherokee nation! And the treaty of 1833 must also be considered a nullity, for it was only negotiated, according to the government's own showing, with one-third of the whole nation!

But we will go further. Suppose the country secured to the "Cherokees west of the Mississippi," by the treaty of 1817, in exchange for their portion of the lands east, could legally be considered the common property of all the Cherokees, east and west, must not the country retained by the "Cherokees east of the Mississippi," and secured to them by the same compact, also be considered the common property of the same parties? Most unquestionably, upon every principle of justice, law, and common sense, it must. But, that no such idea or opinion was, in reality, entertained by either of the parties to the treaties of 1835, is clearly evidenced by the 15th and 18th articles of that instrument. The line of separation, continuing the "eastern" and "western nations" as separate communities, is there distinctly preserved. In making a disposition of the money to be paid for the ceded lands, the 15th article provides for the division of any surplus, as follows: "The balance, whatever the same may be, shall be equally divided between all the people belonging to the Cherokee nation east, according to the census just completed, and such Cherokees as have removed west since June, 1833, who are entitled by the terms of their enrolment and removal to all the benefits resulting from the final treaty between the United States and the Cherokees east, they shall also be paid for their improvements, &c." This article will admit of no construction that does not deprive every Cherokee, who emigrated west anterior to June, 1833, of all or any of the benefits resulting to the Cherokees east under the provisions of the treaty of 1835; and, of course, all who are thus excluded, were considered as having no share or interest in the lands ceded to the United States by that compact. A similar distinction is kept up in the 18th article of the treaty. It is there agreed between the

contracting parties that the annuities arising out of the permanent fund of the nation, secured by this treaty, shall be expended in the purchase of provisions and clothing for the poorer class of the Cherokees, during the period of two years from and after its ratification. This provision excludes from this application the annuities belonging to the western Cherokees, in the following manner: "It is not, however, intended in this article, to interfere with that part of the annuities due to the Cherokees west by the treaty of 1819." This article closes the stipulations of the treaty of 29th December, 1835, concluded between the United States and the Cherokees east of the Mississippi; and in this last act, the separate and independent character of the "Cherokee nation west," is still distinctly recognised, by the declaration, that the property secured to them by the treaty of 1819, could not be interfered with by the parties to this treaty.

The undersigned will now close their investigation of the claim presented by the western Cherokees now called the "old settler" party of the Cherokee nation. They have presented a faithful history of the origin and progress of the nation west of the Mississippi, and have approached the threshold of its downfall, under the sanction of the treaty of 1835–6, to which it was not a party, and from the benefits of which it is expressly excluded by the provisions of that instrument itself. The published records of the government of the United States have furnished the evidence, and given life to the opinions casually expressed in presenting the result of this investigation. This evidence clearly and conclusively proves that the old settlers, then called the "Cherokee nation west of the Mississippi," were the sole Indian party to the treaty of 1833, by which a fee simple was confirmed to them by the United States, for the large and valuable country then in their occupancy. That compact has never yet been abrogated by the parties who made it, and has now as much binding force, as it had on the day it was ratified by the President and Senate of the United States. It has been feebly argued, by those who have attempted to justify that provision in the treaty of 1835 which designates the country west as a home for all the Cherokees east and west, that such provision was warranted by the invitation contained in the treaty of 1828; and also that the treaty of 1835 was sanctioned by the signatures of two delegates representing the Cherokee nation west. Neither of these positions is tenable.

We have already shewn, by incontestible testimony, that the eastern nation obtained no territorial rights in the west under the treaty of 1828. It is gratifying to perceive that our government does not longer adhere to that absurdity. Suppose, however, that all the Cherokees, removed west under the treaty of 1835, could claim under the 8th article of the treaty of 1828, in what condition would it place the United States? By that article every Cherokee, man, woman, and child in the nation east, who have emigrated since the year 1828, would be entitled to "one blanket"—every head of a family to a "good rifle, a kettle and five pounds of tobacco," in addition to the blanket—and every Cherokee from

within the limits of Georgia would be entitled to ten dollars in money, in addition to all other inducements offered to procure emigration by this 8th article!! Let the government cast up this account, and it will be found that the eighteen thousand Cherokees, removed since the treaty of 1828, and most of them under the treaty of 1835, can now present a claim for upwards of four millions of dollars!! The construction, therefore, attempted to be put upon the 8th article of the treaty of 1828, for the purpose of justifying the removal of the Cherokees east to the country west, and thus defeat the claim of the western Cherokees to that country, would, if correct, be a much more serious matter to the treasury than would be produced by doing an act of simple justice to the aggrieved party, who have proved the fallacy of such construction.

In reply to the allegation that the treaty of 1835 was sanctioned by the western Cherokee nation, we have but a few words to say. This nation never signed or sanctioned that instrument in any shape or form. Appended to the treaty, as printed, there appears a paper, signed "James Rogers and John Smith, delegates from the western Cherokee nation." They had no authority from their nation to sign that paper—they did not represent the western Cherokees, and one of them was picked up on the spot, by Commissioner Schermerhorn, for the occasion. This was a dark transaction, but it is sufficiently exposed in the report made by the Commissioner of Indian Affairs, recently communicated to both Houses of Congress by the President of the United States. [See Senate Doc. 298.] At page nine of this report, it is clearly and sufficiently shown that Rogers and Smith could not make the western Cherokees a party to the treaty. And if even they could do so, the paper bearing their signatures, and giving assent to its conditions, contains the following clause protecting the rights of their nation, viz: "But it is expressly understood that nothing in this treaty shall effect any claims of the western Cherokees on the United States." A full exposition of the means used to procure the signatures of Rogers and Smith to the instrument attached to the treaty of 1835, will be found in argument No. 2, of the counsel of the western Cherokees, on pages 32 and 33 of the document above referred to.

In accordance with the order in which we placed the several parties existing in the Cherokee nation, we will now proceed to lay before the government and the country a concise but faithful history of the rise, progress, and destruction of the "treaty party," and present the various grievances of which they complain, and for which they seek redress at the hands of the United States. We will then proceed to show the origin of the "Ross party," the conduct of the great leader of that party, east and west, and expose the manner in which that celebrated instrument, called "an act of union," was brought into existence, by which the present 'Cherokee nation" holds the country of the old "western Cher-

okees." Before we proceed in these investigations, however, we will introduce some more testimony furnished by the United States, which we conceive will put to rest all and every question about the title of these people to that country, at the time the treaty of 1835 was negotiated: and yet, inconsistent as it may appear, we will show that this last mentioned treaty furnishes strong evidence that it was based upon an exchange of lands—and that the price fixed upon as the value of the country east, was arranged upon this basis.

We have already referred to the "3d volume of Senate documents, 1st session of 23d Congress, No. 512," designated in the title page, "Correspondence on the subject of the emigration of Indians, between the 30th of November, 1831, to 27th December, 1833," and marked on the back of the volume, "22 and 9."

At pages 421, 422 and 423 of this volume, will be found a report from Elisha W. Chester to the Secretary of War, dated August 11, 1832, giving the result of his mission among the Cherokees for the purpose of inducing them to sell their country east, and remove west of the Mississippi river. Mr. Chester was the special agent of the United States government, charged with this diplomacy. In order to show clearly and unequivocally that the government did not then claim for the eastern Cherokees any portion of the country belonging to the nation west, we call attention to a communication addressed by Mr. Chester to John Ross, principal chief of the nation, and enclosed in his report, marked B. It will be found on page 425 of the document above referred to; is dated "council ground, Cherokee nation, July 31, 1832," and reads as follows:

"Sir: I am instructed by the Secretary of War to say, that such is his confidence that a country can be selected for the Cherokees west of the Mississippi, which will meet their approbation, that he is willing to enter into a negotiation subject to that condition. In other words, the terms of a treaty can be arranged and agreed upon, which shall not be binding upon the Cherokees until they shall have examined the country and agreed to accept it. Such a course would enable the President, should it be found necessary, to enter into negotiations with any of the tribes west of the Mississippi, in order to effect any desired arrangements for the Cherokees. If apprehended want of a suitable country to which they may remove, be an obstacle in the way of a treaty, it cannot be an obstacle to such a conditional arrangement as is suggested." * * *

Will any man, no matter what his opinions and prejudices may hitherto have been, after reading the above declaration made by the United States government, pretend to say that, at the time it was uttered, any claim was asserted for the eastern Cherokees to the country west of the Mississippi river, belonging to the western Cherokees? Here it will be seen that in July, 1832, a treaty was proposed with the eastern nation based upon the purchase of a suitable country from some of the tribes west of the Mississippi. The western Cherokees then held their title to the country west under the provisions of the treaty of 1828, and this title was con-

firmed to them by the treaty of February, 1833, without making any provision for the accommodation of the eastern Cherokees!!

We will refer to one other official communication, which will be found on page 612 of the volume above cited. It is a letter from the Secretary of War to Governor Lumpkin of Georgia, dated March 12, 1833, one month after the last treaty was negotiated between the United States and the western Cherokees. The second paragraph of this letter reads as follows:

"I had much conversation with them [the delegation from the eastern nation who had just left the seat of government,] on their business, and stated to them specifically the terms the President was disposed to offer, founded on the propositions made to them last year. They were desirous that a sum in goods should be mentioned which the government would be willing to give, if they would relinquish all their rights east of the Mississippi, and seek a country for themselves at their own expense! The President authorized me to offer them $2,500,000, believing that to be the value of the land in which they have an interest, which does not exceed six millions of acres. They declined, however, making any arrangement, saying that the subject must be referred to their people. And thus the matter stands for the present."

If proof, strong and irresistible as words of holy writ, were required to maintain the title of the western Cherokees to their country west of the Mississippi, and exclude the United States and eastern Cherokees from all interest in it, after the treaty of 1833, we conceive that such proof has now been adduced. Every one knows that no man in the country is better acquainted with our Indian affairs generally, and with the rights of the Cherokees especially, than the then distinguished head of the war department. At the time he wrote the above letter, he had three commissioners in the country of the Cherokees west of the Mississippi, who had just concluded a treaty with that nation establishing permanently the boundaries of their country; yet he makes no allusion to this country, but, on the contrary, directly refers to the desire of the eastern Cherokees to sell their country east, and seek a country for themselves at their own expense! And to this proposition the President of the United States assented. We again say, mark the dates! The treaty entered into with the western Cherokees as a separate and distinct nation, and confirming their title to exclusive ownership of a country, was concluded on the 14th day of February, 1843!! The letter of the Secretary of War is dated March 12, 1833, some days after that treaty was received in Washington! It was not then even pretended that any portion of the Cherokee country west of the Mississippi belonged to the Cherokee nation east of that river.

We have done for the present with the old settlers or western Cherokees, and make room for the history of the "treaty party." If our country's records speak truth, their claim is established to seven millions of acres of land, surveyed to them, and for which they are entitled to a patent with a fee simple title! They have also established an occupant title to all the lands lying west of the

above surveyed country, as far as the sovereignty of the United States and their right of soil extend!! This country has been taken from them without their consent. Their title to it came from the United States, and to them they look for indemnity. They desire to injure or harrass no portion of the Cherokee people. They have remonstrated respectfully and peaceably against the settlement of another people upon their land without their consent, and if their appeals had been listened to, and the wrong redressed, as far as it could be done, the Cherokees might now be a prosperous and united people. When the demon is unmasked, who has heretofore prevented these things being accomplished, there will be an awful day of reckoning in the Cherokee nation. Every Cherokee, of every party, if left to exercise his own judgment, and express his own opinion, would rejoice to see justice done to the old western Cherokees; but, unfortunately, they have heretofore been controled, because deceived, by an evil spirit who reigns amongst them.

WASHINGTON, *May* 4, 1848.

SIR: I have been informed (unofficially,) that a resolution has been adopted by the Senate, in executive session, recommending the appointment of commissioners for the purpose of negotiating with the council or government of the Cherokee nation, with the expressed view of effecting an alteration in the conditions of the treaty of August 6, 1846, ratified by the Senate of the United States. I have not been made acquainted with the details of the resolution, nor have I been advised in regard to the influence or interference which has brought it into existence, from any official or authentic source; but I have learnt, in general terms, that the resolution was predicated upon an application made by a delegation from the "old settler" party of the Cherokee nation, appointed last December; and that the proposed alteration of the treaty is intended to restore the sum of *fifty thousand dollars*, given by the 5th article thereof, for the purpose of defraying certain expenses incurred by these people in the prosecution of their claims, and which provision was stricken out by the Senate in the ratification of the treaty. My information goes further and says—"that the $50,000 asked to be restored is to be disposed of in accordance with the terms of certain resolutions adopted by a council of 'old settlers,' which designate its application to certain claims proved before that convention or council *last fall* or *winter*, and upon which certificates have been issued! after first deducting from the amount the sum of $20,000 advanced by the government to the *'old settler delegation' in the city of Washington, upon giving their sanction to the amendments made by the Senate on the 13th day of August*, 1846."

It is known to the department that I have acted as agent and attorney for the 'western Cherokees,' in all their correspondence and negotiation with the government of the United States since their

dispossession of the country and government of the "Cherokee nation west of the Mississippi river," by the operation of the treaty of 1835. I prepared the first memorial of these people, which was agreed upon and signed in convention, at the "forks of the Verdigris and Grand rivers," on the 16th day of April, 1842. Ever since that time I have diligently, and to the best of my ability, performed the duties confided to me. I entered upon these duties in the first instance reluctantly, and not until I was advised and urged to do so by the United States agent then stationed at Fort Gibson. I believed then, as I believe now, that the "western Cherokees," recognized by the treaties of 1828 and 1833, in contradistinction to the "Cherokees east of the Mississippi river," *were the owners of the country west of the Arkansas!* This country and these good people (who had never even entered into controversy with the authorities of the United States,) I found in 1842 in possession and under the dominion of Mr. John Ross, as chief of the Cherokees, who had sold their country east of the Mississippi by the treaty of 1835; and this, too, without any remuneration being made to the rightful owners, who were lawlessly despoiled. The old chiefs of the *old western nation*—men who had signed the treaties of 1817, 1828 and 1833, entered into with the United States—surrounded me as soon as I reached the nation in the fall of 1841, and made their complaints. They looked unhappy, wretched; the very reverse of their prosperous and contented appearance at the commencement of the year 1833, when they were sitting in council with commissioners sent by the United States government "to adjust the boundary lines between *them* and their Creek neighbors," and which council terminated by the treaty of February 14, 1833, in "*guarantying to them* (the western Cherokees) *forever*" the whole country, as described by metes and bounds, west of Arkansas. I revert to these things not as matters of *fancy*, but as matters worthy of the *consideration* of the war department. I was *secretary to the commissioner sent west in* 1832. I am proud to say that I had the *confidence*, full and entire, of the administration by whom I was appointed, and spared no labor or pains to promote its just and benevolent views in making permanent provision for the tribes of that region. *I prepared the treaty of February* 14, 1833. It presents upon its face the "true intent and meaning of the contracting parties" at the time it was made! and the "western Cherokee nation," subsequently designated "old settlers," were then made the sole and exclusive owners of the *Cherokee country* west of the Mississippi river!

Under these circumstances, which I have not heretofore brought to the attention of the department, is it to be wondered at that when, after an absence of eight years, I again visited the nation, the old men who had shouted loud their joy and gratitude at the termination of their last treaty, should come to me in their wretchedness for an explanation of the wrong inflicted upon them, by taking *their country without their consent and giving it to another people*, without paying any value or rendering any equivalent therefor? *I saw the wrong, and believed in the* JUSTICE *of the United States.* I

engaged to present their case before our government and obtain for them a just compensation for the lands taken for the use of the "eastern Cherokees," removed under the treaty of 1835. The country of the Cherokees west, I believed then (in 1842) belonged to what were *then* called the "old settlers," and that the United States government was bound, in good faith, to extinguish that title. In this view, I shall ever feel the proud gratification to know that I have been fully sustained in the searching, able and lucid report of the Commissioner of Indian Affairs, approved by you, and communicated to Congress by the President of the United States, on the 13th April, 1846.

I trust you will find an excuse for me, in making this reference to things personal to myself, in the peculiarities connected with the case. I did not seek the prosecution of the claim of the old "settlers or western Cherokees"—it sought me. In truth, I can say, it was forced upon me. I was first appealed to as a *member of the commission*, which formed the treaty, "*that had been violated*," in the language used by the Cherokee party to that treaty. Colonel Butler, the United States agent, urged them to call a council, and promised to be present and aid them in obtaining justice. At the time the convention met, in April, 1842, he was absent from the agency, and after repeated messages sent to me, I attended their council without him, and prepared their memorial, dated the 16th day of April, 1842. At the same council they passed a resolution, appointing me their agent and attorney in the prosecution of claims, and transaction of all business with the government of the United States. On the same day the old chiefs of the western nation, on behalf of their people, signed a contract, giving me authority to attend to all their business, and fixing my compensation. The memorial and resolutions above referred to, will be found on the files of the Indian Office. My contract has been renewed from time to time, by every delegation sent to Washington, up to the conclusion of the treaty of August, 1846. On the 8th day of July, the day the commissioners, Messrs. Burke, Parris and Armstrong, met the Cherokee delegations in council the first time, the delegation of "old settlers" renewed their contract with me, and I appeared for them before that council.

This is a brief history of my connexion with the "western Cherokees," in the transactions which give rise to this communication. *Amos Kendall, esq.*, was associated with me in July, 1843, and we have stood side by side ever since. He was employed in like manner, by the representatives of the old settlers, and upon the same terms. He is entitled to the same protection I claim for myself, against any attempt that may now be made to deprive us of that which we honestly earned, and which was secured by solemn contract. The "western Cherokees" had no other counsel than Mr. Kendall and myself. In our presentation of the claims of these people, our arguments tended greatly to benefit others; but from *no other quarter* did we seek for or obtain aid. The 5th article of the treaty was not advised by us, except so far as that the money to be paid the Cherokees "*should be paid to each indi-*

vidual;" and this I recommended for the avowed purpose of preventing the poor and ignorant among them from disposing of their *head-right* money, as well as to present a barrier against the presentation to the government (after an appropriation) of spurious and fraudulent claims. The sum of $50,000 was inserted by the commissioners. The old settler delegation recommended a much larger sum, to be left in the hands of government, for the purpose of paying all just debts contracted in the prosecution of the claims of their people. The commissioners, however, objected to it, on the ground that it would meet opposition by the Senate. It was intended by all parties that Mr. Kendall and myself should be paid for our services, according to our contracts; and when the $50,000 was inserted, it was understood that we were to be the first recipients; as it was then supposed that this sum would be appropriated *before the general settlement could be made* under the treaty. After it was stricken out by the Senate, Major *Armstrong* (who it is presumed, prepared the treaty) declared to Mr. Kendall and myself, that our fees, which depended on contingencies, should be paid. That if there would be any difficulty in receiving them in Washington, that he as the disbursing officer in the west, would see that the Indians complied with all contracts fairly made, and where the services had been well and faithfully performed, which were required by such contracts. Under this rule, we desire to be judged, and obtain our award.

As one of the counsel entrusted with the whole management of the business of the "old settlers" or "western Cherokees," and recognized as such counsel by the proper department of this government, I very respectfully claim the right to intercede in behalf of these people, until a full settlement of their claims is obtained under treaty stipulations. By the conditions of the treaty of 1846 they *lose their identity as a separate nation or people*, by the act of their representatives. They cannot now, therefore, exercise any control over acts performed whilst they *existed as a* NATION, or abrogate any contracts entered into in that capacity. The proceedings of the council or convention, convened last December, upon which the resolution is based, recommending an alteration of the late treaty, bear upon their face, (if I am correctly informed in regard to their character,) a palpable design to deprive Mr. Kendall and myself of what we have earned by long years of labor, and much expense. Under the treaty as it stands, we might obtain payment in fulfilment of our contract, as the "*legal representatives*" of the old settlers, before the per capita money is paid to them! But should the proposed changes in the treaty be made, and the proceedings of the late council thus receive the *government sanction*, it would go to show that it was not the *intention of the parties to the treaty that we should be paid;* for the resolutions, after appropriating the balance of the $50,000 to the payment of claims *presented at that council for the first time*, authorize the present delegation to EMPLOY COUNSEL, if necessary!

Now, it was known to all present at that council or convention, that a contract existed with Mr. Kendall and myself, which *held*

our services as counsel until their whole business would be settled. Since the late treaty was concluded, I can speak for myself, and declare that I never directly or indirectly applied to the Cherokees to do any act by which my fees would be secured. My occupation was, to watch the interests of my clients here, and obtain for them all I believe they are justly entitled to under the terms of the late treaty, which also makes them a party to the treaty of 1835, and renders their claim exceedingly complicated, requiring searching and elaborate investigation. The Commissioner of Indian Affairs, I am sure, will do me the justice to say, that I have faithfully performed my duty in this respect, and have used every proper argument to obtain such construction of the treaty of 1835, (and I believe the proper one) as will relieve the interests accruing to the "western Cherokees" under that treaty, from all "improper and extravagant expenditures" in which they had no concern, and were entitled to none of the advantages they conferred upon the "eastern Cherokees."

It now appears that whilst their counsel were thus employed here, endeavoring to save all that could be saved for them from the wreck of the treaty of 1835, some of their people at home (who claimed to act as their representatives) were wholly concerned *in disposing of* $30,000 *which they hoped to get into their own hands by a change in the treaty!* The idea of contending for the largest amount of money which could be obtained for distribution *per capita* among their people, by a fair and liberal settlement of their claim under treaty stipulations, never seemed to enter their minds, and they appeared perfectly content *in receiving the large sums heretofore advanced to the different delegations in Washington, with the additional* $30,000, *to close the account!!* I respectfully protest against this whole proceeding. The "western Cherokees" as they existed when I had dealings with them, could not have been parties to the transaction. They were a just, an honest people. They held sacred all their contracts, with the United States as well as with individuals. Their chiefs and counsellors had at heart the welfare of the weak and ignorant of their nation more than their own. It was on account of that portion of the "old settler nation," that these chiefs and counsellors, at the risk of their lives, declared their right to the whole Cherokee country in open council, in 1841 and 1842, and contended for that right until settlement was made by the treaty of 1846. These people, therefore, would not knowingly sanction the "settlement of all accounts" in the manner now proposed, and in their name I humbly protest against it.

In entering this protest, I do not intend to say that the just debts of the "old settlers" in their collective or national capacity should not be paid. They necessarily incurred expenses, which they had no means of defraying during the eight years they have been involved in the prosecution of their claim to the country. These debts should be ascertained, and *paid in full*, but let that be done in the ordinary manner. Let them be proved before the United States agent, and then submitted to the War Department

for final examination and settlement. If the treaty requires remodeling for the purpose of enabling the department to protect the honest creditors of the Cherokees, as well as the poorer classes among these people, let a provision be made to submit every claim founded upon a written contract or otherwise, to the head of the Indian Department for examination, and allowance or rejection. I believe it to be as injurious in our relations with Indian tribes, to permit them to defraud those lawfully transacting business with them, as to allow them to be cheated by others. Their *morals* are as much under the guardianship of this government as their *persons* or *estates*.

I have taken the liberty, in absence of Mr. Kendall, of respectfully submitting these remarks for your consideration.

With great respect, your obedient servant,

S. C. STAMBAUGH.

Hon. Wm. L. Marcy,
Secretary of War.